

WSR 17-21-014
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Behavioral Health Administration)

[Filed October 9, 2017, 7:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-091.

Title of Rule and Other Identifying Information: The department is proposing to create new sections within chapter 388-877B WAC, Substance use disorder services.

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of behavioral health and recovery (DBHR) is proposing new rules in chapter 388-877B WAC to enable behavioral health agencies to become certified to deliver secure withdrawal management and stabilization services. RCW 71.05.760(2) directs the department to ensure that at least one sixteen bed secure detoxification facility is operational by April 1, 2018, and that at least two sixteen bed secure detoxification facilities are operational by April 1, 2019. RCW 71.05.760, effective April 1, 2018, directs DSHS and behavior health organizations to develop a transition process and training for crisis responders to carry out functions in chapters 71.05 and 71.34 RCW.

Reasons Supporting Proposal: These new rules implement the directives in E3SHB 1713 from 2016 and other legislation passed in 2017 amending chapters 71.05, 71.24, and 71.34 RCW, adding substance use disorders to existing mental health processes for investigation, detention, involuntary treatment, ongoing assessment, court process and commitment. Amendments effective April 1, 2018, authorize DSHS to write rules to establish procedures and standards for secure detoxification (withdrawal management and stabilization) facilities.

Statutory Authority for Adoption: RCW 71.05.215, 71.05.560, 71.24.035, 71.24.037, 71.34.380.

Statute Being Implemented: Chapters 71.05, 71.24 and 71.34 RCW, RCW 71.05.760.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Tony O'Leary, P.O. Box 45330, Olympia, WA 98504-5330, 360-725-1039; Implementation and Enforcement: Arthur Williams, P.O. Box 45330, Olympia, WA 98504-5330, 360-725-3424.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Stephanie Vaughn, P.O. Box 45330, Olympia, WA 98504-5330, phone 360-725-1342, fax 360-586-0341, TTY 1-800-833-6384, email Stephanie.vaughn@dshs.wa.gov.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

SUMMARY OF PROPOSED RULES COMPLIANCE REQUIREMENTS (*RCW 19.85.040(1)*): A facility wishing to comply with these rules to become licensed and certified by DBHR to provide secure withdrawal management and stabilization would need to follow all recordkeeping, reporting, and other compliance requirements required by the department of health and DBHR related to providing the necessary care of individuals who meet the statutory criteria for involuntary treatment because of a substance use disorder.

INVOLVEMENT OF STAKEHOLDERS: DBHR has continued to invite the input of stakeholders through the different stages of planning and implementation of the directives given by the 2016 legislature in E3SHB 1713. The division developed and conducted trainings across the state as part of the process to combine the functions of designated chemical dependency specialists and designated mental health professionals into the new designated crisis responder role. The department fielded questions and suggestions from these professionals which helped inform the drafting of the new rules. The division also circulated early versions of the WAC language to several hundred stakeholders, and the comments received were crucial to the forming of the proposed rules. DBHR staff contacted five behavioral health providers who had indicated a serious interest in being considered as one of the first secure withdrawal management and stabilization facilities to be set in place in 2018 and 2019. DBHR asked these providers to complete a survey indicating what they estimated their costs might be. Three returned completed surveys and their input is included in our analysis below.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED: This proposed WAC change describes the certification requirements for a facility to become a secure withdrawal management and stabilization facility licensed and certified with DBHR. RCW 71.05.760 requires DSHS to ensure that at least one secure withdrawal management facility is operational by April 1, 2018, and that a second is operational by April 1, 2019. One of the facilities that have indicated interest in these first two phases indicated that they qualify as a small business.

EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS: WAC 388-877-0345 explains what behavioral health agencies must do to become certified with DBHR to provide a new service. A licensed behavioral health agency

must submit an abbreviated application that is signed by the agency's designated official, include a description of the agency's policies and procedures relating to the new service, and include payment of appropriate fees. DBHR collected survey information about anticipated costs associated with setting up a secure withdrawal management and stabilization facility. The estimated costs had a wide range. Behavioral health agencies that are already certified with DBHR to provide detoxification services or evaluation and treatment services may already be operationalizing some of the facility or staffing resources that secure withdrawal management and stabilization services require. Also, the cost impacts may have been interpreted differently between survey responders. One survey responder summarized all costs within the per client/per day cost and did not specify how those costs were broken out. We summarize all the responses below. DBHR anticipates that many or all of these costs will be offset by the reimbursement rate.

Certification fees: It costs \$200 to add substance use disorder treatment service for agencies that are already licensed with DBHR and certified to provide one or more services (WAC 388-877-0365).

Equipment and supplies: The surveyed providers estimated their additional equipment costs in a range from \$1000 to \$50,000. The larger end of that range included money for depreciation of equipment and the building itself. The providers we surveyed estimated supplies costing anywhere from about \$100,000 to about \$448,000.

Labor and professional services: Surveyed providers returned estimates for labor as being between around \$915,000 to around \$1,350,000. This higher end of the range includes salaries and benefits, as well as an additional medical director. The providers estimated the costs to hire nurses and other medical and professional staff would be anywhere from \$21,970 to \$142,000. The higher end of the range covers an advanced registered nurse practitioner ARNP and an on-call physician.

Increased administrative costs: Estimates for increased administrative costs ranged from \$25,337 to \$397,818.

Occupancy costs: Responders estimated from \$90,000 to \$132,000 (the \$132,000 includes added housekeeping).

Anticipated loss of jobs or revenue (RCW 19.85.040): All agencies reported that there would be zero anticipated loss of revenue, and zero anticipated loss of jobs.

Totals: Estimated total cost per client (bed) per day:

Survey Responder 1: \$316 - Survey Responder 2: \$408.72 - Survey Responder 3: \$500.

Costs Specific to Small Businesses (RCW 19.85.040(1), 19.85.020): One of the requirements of the Regulatory Fairness Act is that the department compare the costs of compliance for small business with costs of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per one hundred dollars of sales (RCW 19.85.040). In a hospital or residential-type setting such as secure withdrawal management and stabilization facilities, it is customary to characterize costs as cost per client per day. In our survey, one provider indicated it was a small business. This small business esti-

mated that their cost per client per day was about one hundred dollars less than the largest business, and about one hundred dollars more per day than another large business. The largest business anticipated the largest cost per client per day.

Efforts DBHR has undertaken to mitigate these costs, where possible (RCW 19.85.030(2)): DBHR has several methods to mitigate costs that might be barriers to small business, where possible. DBHR provides technical assistance from licensing and certification staff in the creation of the policies and procedures required by the certification process. This is at no cost to the applicant and it helps smaller businesses to avoid the expense of hiring consultants for these purposes. Also, after considering feedback from the designated crisis responder trainings and stakeholder comments from an informal draft review, DBHR has changed the requirement in WAC 388-877B-0155(2) to have an evaluation done by a chemical dependency professional (CDP) from within twenty-four hours of admission to seventy-two hours of admission. This not only gives time for individuals to medically stabilize but also allows a small business to save costs by eliminating the need to employ a CDP twenty-four hours a day.

Industries involved (RCW 19.85.040 (2)(c)): Draft WAC 388-877B-0145(3) states the substance use disorder agencies that provide secure withdrawal management and stabilization must be a facility licensed by the department of health according to one of the following categories:

- Hospitals under chapter 246-320 WAC.
- Private psychiatric and alcoholism hospitals under chapter 246-322 WAC.
- Private alcohol and substance use disorder hospitals under chapter 246-324 WAC.
- Residential treatment facilities under chapter 246-337 WAC, under the service category of chemical dependency acute detoxification listed in WAC 246-337-015(1).

These fall under the following North American Industry Classification System (NAICS) codes:

622110	General Medical and Surgical Hospitals.
622210	Psychiatric and Substance Abuse Hospitals.
622310	Specialty (except Psychiatric and Substance Abuse) Hospitals.
623220	Residential Mental Health and Substance Abuse Facilities.

Benefits Anticipated by Survey Responders: The following are some of the benefits mentioned during the DBHR survey of potential providers:

- They would be able to provide a new service to clients with chronic substance use disorders and those classified as being gravely disabled by their addiction and behavioral health issues.
- This will allow a seamless transition from detoxification to treatment.
- There are current clients awaiting this type of treatment who would benefit.

- This is an opportunity to treat a chronic population who might otherwise not seek treatment without this program.

Survey responders estimated the numbers of jobs created or lost (RCW 19.85.040 (2)(d)) as follows: Two providers anticipated the creation of fifteen jobs each, one provider anticipated twenty jobs. No provider anticipated the loss of any jobs.

Benefits Reported by Washington State Institute for Public Policy (WSIPP): Many benefits were reported by WSIPP for the integrated crisis response pilots authorized by chapter 70.96B RCW that was the forerunner of the secure withdrawal management and stabilization facilities. In the May 2011 report "Integrated Crisis Response Pilots: Long-Term Outcomes of Clients Admitted to Secure Detox," WSIPP followed individuals for eighteen months after their first admission to the pilot secure detox facilities. Their outcomes were compared to matched groups of individuals at other regional support networks where secure withdrawal management and stabilization was unavailable. Their analysis revealed that admission to secure detoxification facilities was strongly associated with:

- Fewer admissions to state and community psychiatric hospitals;
- Greater participation in in-patient substance use disorder treatment;
- More rapid entry into substance use disorder treatment;
- Higher rates of employment;
- Savings from fewer hospitalizations and avoidance of more expensive detentions to mental health facilities that more than offset the cost of the secure withdrawal management and stabilization facilities.

The department anticipates significant cost savings for the treatment of individuals who are currently being treated in other types of facilities. Current costs for treating involuntarily detained individuals who may need withdrawal management and stabilization are:

- In an emergency department, roughly \$1200 per day;
- In an evaluation and treatment facility, roughly \$800 - \$1000 per day;
- In a secure withdrawal management and stabilization facility, as estimated by our survey responders, roughly \$300 - \$500 per day.

This means, at the cost estimated by our survey responders, these individuals can be treated at roughly half (or more) of the cost, in some instances.

BENEFITS OUTWEIGH THE COSTS (RCW 34.05.328(1)): The organizations that responded to the DBHR survey all indicated that the benefits outweigh the costs of becoming certified to deliver these services. As one provider stated, "... We will be able to provide evidence based practice services to the targeted population and for the first time have a reimbursement rate from the state that covers the true cost of providing the service."

CONCLUSION: DBHR, after consulting with the providers who are considering using these rules to become certified as a secure withdrawal management and stabilization facility,

concludes that the probable benefits of the proposed rule amendments outweigh the probable cost.

A copy of the statement may be obtained by contacting Stephanie Vaughn, P.O. Box 45330, Olympia, WA 98504-5330, phone 360-725-1342, fax 360-586-0341, TTY 1-800-833-6384, email Stephanie.vaughn@dshs.wa.gov.

October 3, 2017
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-877B-0140 Secure withdrawal management and stabilization facilities—General. The rules in WAC 388-877B-0140 through 388-877B-0180 apply to behavioral health agencies that provide secure withdrawal management and stabilization services.

(1) Secure withdrawal management and stabilization services are provided to an individual to assist in the process of withdrawal from psychoactive substances in a safe and effective manner, or medically stabilize an individual after acute intoxication, in accordance with patient placement criteria and chapters 71.05 and 71.34 RCW.

(2) An agency providing secure withdrawal management and stabilization services to an individual must:

(a) Be a facility licensed by department of health under one of the following department of health chapters:

(i) Hospital licensing regulations in chapter 246-320 WAC;

(ii) Private psychiatric and alcoholism hospitals in chapter 246-322 WAC;

(iii) Private alcohol and substance use disorder hospitals in chapter 246-324 WAC; or

(iv) Residential treatment facility in chapter 246-337 WAC, under the service category chemical dependency acute detoxification in WAC 246-337-015(1);

(b) Be licensed by the department as a behavioral health agency;

(c) Meet the applicable behavioral health agency licensure, certification, administration, personnel, and clinical requirements in chapter 388-877 WAC and WAC 388-877B-0110; and

(d) Have policies and procedures to support and implement the:

(i) General requirements in chapter 388-877 WAC; and

(ii) Specific applicable requirements in WAC 388-877B-0140 through 388-877B-0180.

(3) An agency must:

(a) Use patient placement criteria for continuing care needs and discharge planning and decisions;

(b) Provide tuberculosis screenings to individuals for the prevention and control of tuberculosis; and

(c) Provide HIV/AIDS information and include a brief risk intervention and referral as indicated.

NEW SECTION

WAC 388-877B-0145 Secure withdrawal management and stabilization facilities—Standards for administration. A secure withdrawal management and stabilization

facility must develop policies and procedures to implement all of the following administrative requirements:

(1) Policies to ensure that services are provided in a secure environment. "Secure" means having:

(a) All doors and windows leading to the outside locked at all times;

(b) Visual monitoring, either by line of sight or camera as appropriate to the individual;

(c) Adequate space to segregate violent or potentially violent persons from others;

(d) The means to contact law enforcement immediately in the event of an elopement from the facility; and

(e) Adequate numbers of staff present at all times that are trained in facility security measures.

(2) Designation of a professional person as defined in RCW 71.05.020 in charge of clinical services at that facility.

(3) Policies to ensure compliance with WAC 246-337-110 regarding seclusion and restraint.

(4) A policy management structure that establishes:

(a) Procedures for admitting individuals needing secure withdrawal management and stabilization services seven days a week, twenty-four hours a day;

(b) Procedures to ensure that once an individual has been admitted, if a medical condition develops that is beyond the facility's ability to safely manage, the individual will be transported to the nearest hospital for emergency medical treatment;

(c) Procedures to assure access to necessary medical treatment, including emergency life-sustaining treatment and medication;

(d) Procedures to assure the protection of individual and family rights as described in this chapter and chapters 71.05 and 71.34 RCW;

(e) Procedures to inventory and safeguard the personal property of the individual being detained, including a process to limit inspection of the inventory list by responsible relatives or other persons designated by the detained individual;

(f) Procedures to assure that a chemical dependency professional and licensed physician are available for consultation and communication with both the individual and the direct patient care staff twenty-four hours a day, seven days a week;

(g) Procedures to warn an identified person and law enforcement when an adult has made a threat against an identified victim as explained in RCW 70.02.050 and in compliance with 42 C.F.R. Part 2; and

(h) Procedures to ensure that individuals detained for up to fourteen or ninety additional days of treatment are evaluated by the professional staff of the facility in order to be prepared to testify that the individual's condition is caused by a substance use disorder and either results in likelihood of serious harm or the individual being gravely disabled.

NEW SECTION

WAC 388-877B-0150 Secure withdrawal management and stabilization facilities—Admission and intake evaluation. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through

388-877-0530, a secure withdrawal management and stabilization facility must ensure all of the following requirements:

(1) The facility must obtain a copy of the petition for initial detention stating the evidence under which the individual was detained.

(2) The facility must document that each individual has received evaluations to determine the nature of the disorder and the treatment necessary, including:

(a) A telephone screening by a nurse, as defined in chapter 18.79 RCW, prior to admission that includes current level of intoxication, available medical history, and known medical risks;

(b) A health assessment of the individual's physical condition to determine if the individual needs to be transferred to an appropriate hospital for treatment;

(c) Examination and medical evaluation within twenty-four hours of admission by a licensed physician, advanced registered nurse practitioner, or physician assistant;

(d) An evaluation by a chemical dependency professional within seventy-two hours of admission to the facility;

(e) An assessment for substance use disorder and additional mental health disorders or conditions, using the global appraisal of individual needs - short screener (GAIN-SS) or its successor;

(f) Development of an initial plan for treatment while in the facility;

(g) Consideration of less restrictive alternative treatment at the time of admission; and

(h) The admission diagnosis and what information the determination was based upon.

(3) For individuals admitted to the secure withdrawal management and stabilization facility, the clinical record must contain:

(a) A statement of the circumstances under which the person was brought to the unit;

(b) The admission date and time;

(c) The date and time when the involuntary detention period ends;

(d) A determination of whether to refer to a designated crisis responder to initiate civil commitment proceedings;

(e) If an individual is admitted voluntarily and appears to meet the criteria for initial detention, documentation that an evaluation was performed by a designated crisis responder within the time period required in RCW 71.05.050, the results of the evaluation, and the disposition;

(f) Review of the client's current crisis plan, if applicable and available; and

(g) Review of the admission diagnosis and what information the determination was based upon.

(4) An individual who has been delivered to the facility by a peace officer for evaluation must be evaluated by a mental health professional within the following time frames:

(a) Three hours of an adult individual's arrival;

(b) Twelve hours of arrival for a child in an inpatient evaluation and treatment facility; or

(c) At any time for a child who has eloped from a child long-term inpatient treatment facility and is being returned to the facility.

(5) If a mental health professional or chemical dependency professional and physician, physician assistant, or psy-

chiatric advanced registered nurse practitioner determine that the needs of an individual would be better served by placement in an evaluation and treatment facility then the individual must be referred to a more appropriate placement in accordance with RCW 71.05.210.

NEW SECTION

WAC 388-877B-0155 Secure withdrawal management and stabilization facilities—Treatment plan. In addition to meeting the agency clinical requirements in WAC 388-877-0620, a secure withdrawal management and stabilization facility must ensure the treatment plan includes all of the following:

- (1) A protocol for safe and effective withdrawal management, including medications as appropriate.
- (2) Services to each individual that addresses the individual's:
 - (a) Substance use disorder and motivation;
 - (b) Use of patient placement criteria for continuing care needs and discharge planning and decisions; and
 - (c) Resources and referral options to refer an individual to appropriate services.
- (3) At least daily contact between each involuntary individual and a chemical dependency professional or a trained professional person for the purpose of:
 - (a) Observation;
 - (b) Evaluation;
 - (c) Release from involuntary commitment to accept treatment on a voluntary basis; and
 - (d) Discharge from the facility to accept voluntary treatment upon referral.
- (4) Discharge assistance provided by chemical dependency professionals, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual.

NEW SECTION

WAC 388-877B-0160 Secure withdrawal management and stabilization facilities—Agency staff requirements. In addition to meeting the agency administrative and personnel requirements in WAC 388-877-0400 through 388-877-0530, a secure withdrawal management and stabilization facility must ensure all of the following:

- (1) All of the agency staff requirements found in WAC 388-877B-0110 for substance use disorder detoxification services are met.
- (2) Development of an individualized annual training plan, to include at least:
 - (a) The skills the staff member needs for the staff member's job description and the population served;
 - (b) Least restrictive alternative options available in the community and how to access them;
 - (c) Methods of individual care;
 - (d) De-escalation training and management of assaultive and self-destructive behaviors, including proper and safe use of seclusion and restraint procedures; and
 - (e) The requirements of chapters 71.05 and 71.34 RCW, this chapter, and protocols developed by the division of behavioral health and recovery.

- (3) Compliance with the training requirements outlined in subsection (2) of this section if contract staff provide direct services.

NEW SECTION

WAC 388-877B-0165 Secure withdrawal management and stabilization facilities—Posting of individual rights. The individual rights assured by RCW 71.05.217 and 71.34.355 must be prominently posted within the department or ward of the secure withdrawal management and stabilization facility and provided in writing to the individual in a language or format that the individual can understand, as follows: "You have the right to:

- (1) Immediate release, unless involuntary commitment proceedings are initiated or you are a minor under parent-initiated treatment;
- (2) Wear your own clothes and to keep and use personal possessions, except when deprivation is essential to protect your safety or that of another person;
- (3) Keep and be allowed to spend a reasonable sum of your own money for canteen expenses and small purchases;
- (4) Receive adequate care and individualized treatment;
- (5) Have all information and records compiled, obtained, or maintained in the course of receiving services kept confidential in compliance with state and federal law;
- (6) Have access to individual storage space for your private use;
- (7) Have visitors at reasonable times;
- (8) Have reasonable access to a telephone, both to make and receive confidential calls;
- (9) Have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mail;
- (10) Not consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320 or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction under RCW 71.05.215 and 71.05.217;
- (11) Dispose of property and sign contracts unless you have been adjudicated as incompetent in a court proceeding directed to that particular issue; and
- (12) Not have psychosurgery performed under any circumstances."

NEW SECTION

WAC 388-877B-0170 Secure withdrawal management and stabilization facilities—Rights related to antipsychotic medication. All individuals have a right to make an informed decision regarding the use of antipsychotic medication consistent with the provisions of RCW 71.05.215 and 71.05.217. The provider must develop and maintain a written protocol for the involuntary administration of antipsychotic medications, including all of the following requirements:

- (1) The clinical record must document all of the following:
 - (a) An attempt to obtain informed consent.
 - (b) The individual was asked if they wish to decline treatment during the twenty-four hour period prior to any

court proceeding that is related to their continued treatment and the individual has the right to attend. The individual's answer must be in writing and signed when possible. In the case of a child under the age of eighteen, the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority must be able to explain to the court the probable effects of the medication.

(c) The reasons why any antipsychotic medication is administered over the individual's objection or lack of consent.

(2) The psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority may administer antipsychotic medications over an individual's objections or lack of consent only when:

(a) An emergency exists, provided there is a review of this decision by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority within twenty-four hours of the decision. An emergency exists if all of the following are true:

(i) The individual presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and

(iii) In the opinion of the psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, the individual's condition constitutes an emergency requiring that treatment be instituted before obtaining an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority.

(b) There is an additional concurring opinion by a second psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority, for treatment up to thirty days.

(c) For continued treatment beyond thirty days through the hearing on any one hundred eighty-day petition filed under RCW 71.05.217, provided the facility's medical director or director's medical designee reviews the decision to medicate an individual. Thereafter, antipsychotic medication may be administered involuntarily only upon order of the court. The review must occur at least every sixty days.

(3) The examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health profes-

sional with prescriptive authority must sign all one hundred eighty-day petitions for antipsychotic medications filed under the authority of RCW 71.05.217.

(4) Individuals committed for one hundred eighty days who refuse or lack the capacity to consent to antipsychotic medications have the right to a court hearing under RCW 71.05.217 prior to the involuntary administration of antipsychotic medications.

(5) In an emergency, antipsychotic medications may be administered prior to the court hearing provided that an examining psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority files a petition for an antipsychotic medication order the next judicial day.

(6) All involuntary medication orders must be consistent with the provisions of RCW 71.05.217, whether ordered by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with a mental health professional with prescriptive authority or the court.

NEW SECTION

WAC 388-877B-0175 Secure withdrawal management and stabilization facilities—Special considerations for serving minor children. Secure withdrawal management and stabilization facilities serving minor children seventeen years of age and younger must develop and implement policies and procedures to address special considerations for serving children. These special considerations must include all of the following:

(1) Procedures to ensure that adults are separated from minors who are not yet thirteen years of age.

(2) Procedures to ensure that a minor who is at least age thirteen but not yet age eighteen is served with adults only if the minor's clinical record contains:

(a) Documentation that justifies such placement; and

(b) A professional judgment that placement in a secure withdrawal management and stabilization facility that serves adults will not harm the minor or adults.

(3) Procedures to ensure examination and evaluation of a minor by a children's mental health specialist occurs within twenty-four hours of admission.

(4) Procedures to ensure a facility that provides secure withdrawal management and stabilization services for minors and is licensed by the department of health under chapter 71.12 RCW, meets the following notification requirements if a minor's parent(s) brings the child to the facility for the purpose of withdrawal management treatment or evaluation. The facility must:

(a) Provide a written and oral notice to the minor's parent(s) or legal representative(s) of:

(i) All current statutorily available treatment options available to the minor including, but not limited to, those provided in chapter 71.34 RCW; and

(ii) A description of the procedures the facility will follow to utilize the treatment options; and

(b) Obtain and place in the clinical file a signed acknowledgment from the minor's parent(s) that they received the notice required under (a) of this subsection.

(5) Procedures that address provisions for evaluating a minor brought to the facility for evaluation by a parent(s).

(6) Procedures to notify child protective services any time the facility has reasonable cause to believe that abuse, neglect, financial exploitation, or abandonment of a minor has occurred.

(7) Procedures to ensure a minor thirteen years of age or older who is brought to a secure withdrawal management and stabilization facility or hospital for immediate withdrawal management services is evaluated by the professional person in charge of the facility. The professional person must evaluate the minor's condition and determine the need for secure withdrawal management treatment and the minor's willingness to obtain voluntary treatment. The facility may detain or arrange for the detention of the minor for up to twelve hours for evaluation by a designated crisis responder to commence detention proceedings.

(8) Procedures to ensure that the admission of a minor thirteen years of age or older admitted without parental consent has the concurrence of the professional person in charge of the facility and written review and documentation no less than every one hundred eighty days.

(9) Procedures to ensure that notice is provided to the parent(s) when a minor child is voluntarily admitted to secure withdrawal management treatment without parental consent within twenty-four hours of admission in accordance with the requirements of RCW 71.34.510 and within the confidentiality requirements of 42 C.F.R. Sec. 2.14.

(10) Procedures to ensure a minor who has been admitted on the basis of a designated crisis responder petition for detention for secure withdrawal management and stabilization services is evaluated by the facility providing seventy-two hour secure withdrawal management and stabilization services to determine the minor's condition and either admit or release the minor. If the minor is not approved for admission, the facility must make recommendations and referral for further care and treatment as necessary.

(11) Procedures for the examination and evaluation of a minor approved for inpatient admission to include:

(a) The needs to be served by placement in an evaluation and treatment facility;

(b) Restricting the right to associate or communicate with a parent(s); and

(c) Advising the minor of their rights in accordance with chapter 71.34 RCW.

(12) Procedures to petition for fourteen-day commitment that are in accordance with RCW 71.34.730.

(13) Procedures for commitment hearing requirements and release from further secure withdrawal management and stabilization services that may be subject to reasonable conditions, if appropriate, and are in accordance with RCW 71.34.740.

(14) Procedures for discharge and conditional release of a minor in accordance with RCW 71.34.770, provided that the professional person in charge gives the court written notice of the release within three days of the release.

(15) Procedures to ensure rights of a minor undergoing treatment and posting of such rights are in accordance with RCW 71.34.355, 71.34.620, and 71.34.370.

(16) Procedures for the release of a minor who is not accepted for admission or who is released by a secure withdrawal management and stabilization facility that are in accordance with RCW 71.34.365.

(17) Procedures to ensure treatment of a minor and all information obtained through treatment under this chapter are disclosed only in accordance with RCW 71.34.340.

(18) Procedures to make court records and files available in accordance with RCW 71.34.335.

(19) Procedures to release secure withdrawal management and stabilization services information only in accordance with applicable state and federal statutes.

NEW SECTION

WAC 388-877B-0180 Secure withdrawal management and stabilization facilities—Minor children seventeen years of age and younger—Admission, evaluation, and treatment without the minor's consent. (1) A secure withdrawal management and stabilization facility may admit, evaluate, and treat a minor child seventeen years of age or younger without the consent of the minor if the minor's parent(s) brings the minor to the facility.

(2) The secure withdrawal management and stabilization facility must follow all of the requirements outlined for evaluation and treatment facilities in WAC 388-865-0578 and RCW 71.34.600 through 71.34.630.

WSR 17-21-023

PROPOSED RULES

WESTERN WASHINGTON UNIVERSITY

[Filed October 10, 2017, 8:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-078.

Title of Rule and Other Identifying Information: Chapter 516-09 WAC, Public records.

Hearing Location(s): On November 21, 2017, at 12:00 p.m., at Western Washington University, Main Campus, Board Room, Old Main 340, 516 High Street, Bellingham, WA 98225.

Date of Intended Adoption: December 15, 2017.

Submit Written Comments to: Jennifer L. Sloan, Rules Coordinator, Western Washington University, 516 High Street, Bellingham, WA 98225-9015, email Jennifer.Sloan@wwu.edu, fax 360-650-6197, by November 20, 2017.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, phone 360-650-3117, fax 360-650-6197, TTY 800-833-6384, email Jennifer.Sloan@wwu.edu, by November 8, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to recent legislation relating to costs associated with responding to public records requests, fee waivers, and denial of certain requests, sections of chapter 516-09 WAC will be amended

to be in compliance with state mandates. Also, the definition of public record will be updated to match the current definition in the RCW and general housekeeping changes will include removing outdated language as well as updating language to align with current practice.

Reasons Supporting Proposal: The university is updating procedures regarding requests for public records in order to comply with legislative changes to the Public Records Act (chapter 42.56 RCW) pursuant to RCW 42.56.120(2), as amended by section 3, chapter 304, Laws of 2017, which are effective July 23, 2017. RCW 42.56.120 as amended requires that before an agency uses the amended statutory default copy fee schedule in the new law (rather than determining actual costs of copies), the agency must have a rule declaring the reason that it is not calculating actual costs because to do so would be unduly burdensome. The statute as amended also allows an agency to waive any charge assessed for a public record pursuant to a rule. The university is also making general housekeeping changes.

Statutory Authority for Adoption: RCW 28B.35.120 and 42.56.100.

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

Name of Proponent: Western Washington University, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dolapo Akinrinade, Public Records Officer, Old Main, 330K, 360-650-2728.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes to the public records rule would not impose a disproportionate impact on small business.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

October 10, 2017
Jennifer L. Sloan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-09-114, filed 4/20/16, effective 5/21/16)

WAC 516-09-020 Agency description—Contact information—Public records officer. (1) Western Washington University is an institution of higher education, authority for which is located in chapter 28B.35 RCW. The administrative offices of the university are located at the university's main campus at Bellingham, Washington. (~~The university also has education centers in Seattle, Everett, Mountlake Terrace, Shoreline, Bremerton, Oak Harbor, Anacortes, and Port Angeles.~~)

(2) Any person wishing to request access to public records of the university, or seeking assistance in making such a request, should contact the university's public records officer located at the main campus listed below:

Public Records Officer
Western Washington University
516 High Street
Bellingham, WA 98225
Phone: 360-650-2728
Fax: 360-650-4228

Current contact information and additional information regarding release of public records can be found (~~on the university web site at <http://www.wvu.edu/publicrecords/index.shtml>~~) online at the public records officer's web site.

(3) The public records officer will oversee compliance with the act but another university staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the university will provide the "fullest assistance" to requestors; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the university.

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

WAC 516-09-030 Availability of public records. (1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the university in the presence of university staff. For the purposes of this chapter, the normal business hours for the public records office are from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding university holidays. Other hours of inspection may be arranged if the requestor and the public records officer or designee agree on a different time. Records must be inspected at the offices of the university in the presence of university staff.

(2) Index of records. The Western Washington University records retention schedule is the index of records (~~created after June 30, 1990. Links to many of these schedules can be located at <http://www.wvu.edu/depts/reemgmt/>~~) and is available online at the university archives and records management web site.

(3) (~~Organization of records. The university will maintain its records in a reasonably organized manner. The university will take reasonable actions to protect records from damage and disorganization.~~) A requestor shall not take university records from university offices without the permission of the public records officer or designee. Certain records are available on the university web site (~~at www.wvu.edu~~). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the university must make the request in writing on the university's request form (~~(, appended to this chapter and)~~) located at (~~(http://www.library.wvu.edu/info/pubrecords_request.pdf)~~) the public records officer's web site; or by let-

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records ((or a deposit. Pursuant to RCW 42.56.120, standard photocopies will be provided at a rate of no more than fifteen cents per page, or such amount as may be established in law)) per WAC 516-09-070.

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

WAC 516-09-03001 "Public record" defined.

((Courts use a three-part test to determine if a record is a "public record." The document must be: A "writing,") A public record includes any writing containing information ((⁽¹⁾)relating to the conduct of government(⁽²⁾) or the performance of any governmental or proprietary function, (⁽³⁾)prepared, owned, used, or retained(⁽⁴⁾ "by an)) by any state agency((⁽⁵⁾

(1) ~~Writing.~~ A "public record" can be any writing "regardless of physical form or characteristics." RCW 42.17.020(41). "Writing" is defined very broadly as: "...handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated." RCW 42.17.020(48). An email is a "writing."

(2) ~~Relating to the conduct of government.~~ To be a "public record," a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41). Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having absolutely no relation to the conduct of government is not a "public record." Even though a purely personal record might not be a "public record," a record of its existence might be. For example, a record showing the existence of a purely personal email sent by an agency employee on an agency computer would probably be a "public record," even if the contents of the email itself were not.²

(3) ~~"Prepared, owned, used, or retained."~~ A "public record" is a record "prepared, owned, used, or retained" by an agency. RCW 42.17.020(41).

A record can be "used" by an agency even if the agency does not actually possess the record. If an agency uses a record in its decision-making process, it is a "public record."³ For example, if an agency considered technical specifications of a public works project and returned the specifications to the contractor in another state, the specifications would be a "public record" because the agency "used" the document in its decision-making process.⁴ The agency could be required to obtain the public record, unless doing so would be impossible. An agency cannot send its only copy of a record to a third party for the sole purpose of avoiding disclosure.⁵

~~Sometimes agency employees work on agency business from home computers. These home computer records (including email) were "used" by the agency and relate to the "conduct of government" so they are "public records." RCW 42.17.020(41). However, the act does not authorize unbridled searches of agency property.⁶ If agency property is not subject to unbridled searches, then neither is the home computer of an agency employee. Yet, because the home computer documents relating to agency business are "public records," they are subject to disclosure (unless exempt). Agencies should instruct employees that all public records, regardless of where they were created, should eventually be stored on agency computers. Agencies should ask employees to keep agency-related documents on home computers in separate folders and to routinely blind carbon copy ("bcc") work emails back to the employee's agency email account. If the agency receives a request for records that are solely on employees' home computers, the agency should direct the employee to forward any responsive documents back to the agency, and the agency should process the request as it would if the records were on the agency's computers.~~

Notes: ¹*Confederated Tribes of the Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 748, 958 P.2d 260 (1998). For records held by the secretary of the senate or chief clerk of the house of representatives, a "public record" is a "legislative record" as defined in RCW 40.14.100. RCW 42.17.020(41).

²*Tiberino v. Spokane County Prosecutor*, 103 Wn. App. 680, 691, 13 P.3d 1104 (2000).

³*Concerned Ratepayers v. Public Utility Dist. No. 1*, 138 Wn.2d 950, 958-61, 983 P.2d 635 (1999).

⁴*Id.*

⁵*See Op. Att'y Gen.* 11 (1989), at 4, n.2 ("We do not wish to encourage agencies to avoid the provisions of the public disclosure act by transferring public records to private parties. If a record otherwise meeting the statutory definition were transferred into private hands solely to prevent its public disclosure, we expect courts would take appropriate steps to require the agency to make disclosure or to sanction the responsible public officers.")

⁶*See Hangartner v. City of Seattle*, 151 Wn.2d 439, 448, 90 P.3d 26 (2004).))

regardless of physical form or characteristics. This definition does not include records that are not otherwise required to be retained by the agency and are held by volunteers who do not serve in an administrative capacity; have not been appointed by the agency to an agency board, commission, or internship; and do not have a supervisory role or delegated agency authority.

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

WAC 516-09-040 Processing of public records requests—General. (1) Providing "fullest assistance." The university is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with the essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records

requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available;

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification shall be requested and provided in writing by mail or fax. Based upon that clarification, the public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(i) A request for all or substantially all records is not a valid request for identifiable records and will be denied. RCW 42.56.080(2).

(ii) A bot request that is one of multiple requests from the requestor to the agency within a twenty-four-hour period will be denied. A "bot request" means a request for public records that an agency reasonably believes was automatically generated by a computer program or script. RCW 42.56.080(2).

(3) Consequences of failure to respond. If the university does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) Informing persons of records request. In the event that the request seeks records of named persons to whom the records pertain, the public records officer may, prior to providing records, give notice to such persons named in the request whose rights may be affected by the disclosure. The notice to the affected persons will include a copy of the request.

(5) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the university believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) Inspection of records.

(a) Consistent with other demands, the university shall promptly provide space to inspect public records in the presence of university staff. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the university to copy.

(b) The requestor must claim or review the assembled records within thirty days of the university's notification to him or her that the records are available for inspection or copying. The university will notify the requestor in writing of

this requirement and inform the requestor that he or she should contact the university to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the university may close the request. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) Providing copies of records. After inspection is complete, the public records officer or designee shall make any copies of records requested by the requestor or arrange for copying.

(8) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the university has completed a diligent search for the requested records, made any located nonexempt records available for inspection, and provided copies.

(10) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the university has closed the request.

(11) Later discovered documents. If, after the university has informed the requestor that it has provided all available records, the university becomes aware of additional documents existing at the time of the request, it will promptly inform the requestor of the additional documents and will make them available for inspection or provide copies upon payment on an expedited basis.

AMENDATORY SECTION (Amending WSR 08-01-106, filed 12/18/07, effective 1/18/08)

WAC 516-09-070 Costs of providing copies of public records. ~~((+))~~ Costs for providing copies.

~~((a) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require payment of the costs of copying an installment before providing that installment. The university will not charge sales tax when it makes copies of public records.~~

~~(b) Costs for duplicating electronic and other records. The university may charge actual costs for special arrangements necessary for providing copies of records when~~

required by the requestor, e.g., costs of color copying, oversized records, tapes, CDs, or records in other formats. Prior to making duplicate copies)) Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce university resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating the actual costs of charges for records, the public records officer shall establish, maintain, and make available for public inspection and copying a statement of costs that the university charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The university may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. Fees may be waived when the public records officer determines collecting a fee is not cost effective for the university.

Prior to providing records, the public records officer or designee may request ((a deposit of ten percent of)) the estimated cost of reproduction.

((2) Costs of mailing. The university may also charge actual costs of mailing, including the cost of the shipping container.

(3) Payment. Payment may be made by cash, check, or money order to the university.))

WSR 17-21-024
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 10, 2017, 9:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-105.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-412-0015 General information about your food assistance allotments, 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for basic food?, 388-450-0195 Does the department use my utility costs when calculating my basic food or WASHCAP benefits?, 388-470-0005 How do resources affect my eligibility for cash assistance and basic food?, and 388-478-0060 What are the income limits and maximum benefit amounts for basic food?, in order to implement annual adjustments to standards for the Washington basic food program.

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments will decrease maximum allotments to \$640, decrease the minimum benefit to \$15, increase the basic food standard deduction for one to three persons to \$160, increase the maximum shelter deduction increases to \$535, increase the standard utility allowance to \$421, increase the limited utility allowance to \$328, maintain the telephone utility allowance at \$57, increase the maximum gross monthly income and maximum net monthly income limit for households that are not categorically eligible for basic food, increase the maximum asset limit to \$3,500, and increase the one hundred sixty-five percent federal poverty level standard.

Reasons Supporting Proposal: The proposed amendments adopt basic food standards for federal fiscal year (FFY) 2018 in order to comply with requirements of the United States Department of Agriculture, Food and Nutrition Service (FNS), per Supplemental Nutrition Assistance Program (SNAP) Administrative Notice 17-30: SNAP - Fiscal Year (FY) 2018 Cost-of-Living Adjustments (COLA) dated August 1, 2017, and 7 C.F.R. § 273.9 (d)(iii)(B). These proposed amendments update the basic food standard utility allowance (SUA), limited utility allowance (LUA), and telephone utility allowance (TUA) used to comply with SNAP mandatory utility allowances for FFY 2018 memo dated August 28, 2017.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.10 and 273.9 (d)(iii)(B), SNAP Administrative Notice 17-30: SNAP - FY 2018 COLAs, and SNAP utility allowance memo for FFY 2018 dated August 28, 2017.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA 98504, 360-725-4895.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to ... rules of the department of social and

health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 7 C.F.R. 273.10 (If the rule is not adopted the state will be out of compliance with federal regulations).

Is exempt under RCW 74.04.510.

Explanation of exemptions: To implement annual adjustments required under 7 C.F.R. 273.10 (e)(4)(i).

October 5, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-20-087, filed 10/4/16, effective 2/1/17)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington basic food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) program is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) How we determine monthly allotments:

(a) We calculate your monthly allotment for federally-funded basic food as described under WAC 388-450-0162.

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) Maximum allotment:

(a) The maximum allotment for the number of people in your AU eligible for federally funded basic food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) Prorated benefits in the first month. If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month:

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) Combined allotment for first and second month's benefits. If you apply for benefits on or after the sixteenth of the month and we determine you are eligible for food assistance for both the first and second month, we will issue both months' benefits in one allotment.

(6) Minimum allotment. Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) ~~((Sixteen))~~ Fifteen dollars if your AU has one or two members and at least one person is eligible for federally funded basic food; or

(b) ~~((Sixteen))~~ Fifteen dollars if your AU has one or two members and all members of your AU are eligible for state-funded FAP.

(7) Use of food assistance benefits. Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?

(1) We determine if your assistance unit (AU) is eligible for basic food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

(2) Under these federal laws, we subtract the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(a) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	((157)) <u>\$160</u>
2	((157)) <u>\$160</u>
3	((157)) <u>\$160</u>
4	((168)) <u>\$170</u>
5	((197)) <u>\$199</u>
6 or more	((226)) <u>\$228</u>

(b) Twenty percent of your AU's gross earned income (earned income deduction);

(c) Your AU's expected monthly dependent care expense needed for an AU member to:

(i) Keep work, look for work, or accept work;

(ii) Attend training or education to prepare for employment; or

(iii) Meet employment and training requirements under chapter 388-444 WAC;

(d) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200; and

(e) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for basic food? The department calculates your shelter cost income deduction for basic food as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties, or mortgage payments you make ahead of time as allowable shelter costs. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:
 - (i) AU intends to return to the home;
 - (ii) AU has current occupants who are not claiming the shelter costs for basic food purposes; and
 - (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (2)(a) through (2)(d) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of five hundred (~~(seventeen)~~) thirty-five dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over five hundred (~~(seventeen)~~) thirty-five dollars.

AMENDATORY SECTION (Amending WSR 17-10-069, filed 5/3/17, effective 6/3/17)

WAC 388-450-0195 Does the department use my utility costs when calculating my basic food or WASH-CAP benefits? (1) The department uses utility allowances instead of the actual utility costs your assistance unit (AU) pays when we determine your:

- (a) Monthly benefits under WAC 388-492-0070 if you receive Washington state combined application project (WASHCAP); or
- (b) Shelter cost income deduction under WAC 388-450-0190 for basic food.

(2) We use the following amounts (~~(in this subsection)~~) if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs or receives more than twenty dollars in low income home energy assistance program (LIHEAP) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~(eleven)~~) twenty-one dollars.

(b) If your household does not receive a LIHEAP payment and the reason is solely because of your immigration status, you get a SUA of four hundred (~~(eleven)~~) twenty-one dollars.

(c) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (3) of this section, you get a limited utility allowance (LUA) of three hundred (~~(nineteen)~~) twenty-eight dollars.

(d) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of fifty-seven dollars.

(3) "Utility costs" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water;
- (d) Sewer;
- (e) Well installation/maintenance;
- (f) Septic tank installation/maintenance;
- (g) Garbage/trash collection; and
- (h) Telephone service.

(4) If you do not have a utility cost separate from your rent or mortgage payment and do not receive low income energy assistance program (LIHEAP), you do not receive a utility allowance.

AMENDATORY SECTION (Amending WSR 15-02-041, filed 1/2/15, effective 2/2/15)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and basic food? (1) The following definitions apply to this chapter:

(a) "**We**" means the department of social and health services.

(b) "**You**" means a person applying for or getting benefits from the department.

(c) "**Fair market value ((FMV))**" or "**FMV**" means the price at which you could reasonably sell the resource.

(d) "**Equity value**" means the FMV minus any amount you owe on the resource.

(e) "**Community property**" means a resource in the name of the husband, wife, or both.

(f) "**Separate property**" means a resource of a married person that one of the spouses:

- (i) Had possession of and paid for before they were married;
- (ii) Acquired and paid for entirely out of income from separate property; or
- (iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or basic food when:

(a) It is a resource we must count under WAC 388-470-0045 ~~((and))~~ for cash assistance or WAC 388-470-0055 for basic food;

(b) You own the resource~~((:))~~ and we consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that ~~((doesn't))~~ does not have a title; ~~((and))~~

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, we use the equity value as the value of your resources.

(a) Applicants ~~((can))~~ may have countable resources up to one thousand dollars.

(b) Recipients of cash assistance ~~((can))~~ may have an additional three thousand dollars in a savings account.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for basic food:

(a) Three thousand ~~((two))~~ five hundred ~~((fifty))~~ dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand two hundred fifty dollars for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For basic food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; ~~((or))~~

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of ~~((the))~~ a resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

AMENDATORY SECTION (Amending WSR 16-24-051, filed 12/1/16, effective 1/1/17)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for basic food? (1) If your assistance unit (AU) meets all other eligibility requirements for basic food, your AU must have income at or below the limits in ~~((column))~~ columns B and C of this subsection to get basic food, unless you meet one of the exceptions listed below in subsection (2) of this section. The maximum monthly food assistance benefit your AU could receive is listed in column D of this subsection.

EFFECTIVE ~~((10/1/2016))~~ 10/1/2017

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	(((\$1,287)) <u>\$1,307</u>	(((\$990)) <u>\$1,005</u>	(((\$194)) <u>\$192</u>	(((\$1,634)) <u>\$1,659</u>
2	(((\$1,736)) <u>1,760</u>	(((\$1,335)) <u>1,354</u>	(((\$357)) <u>352</u>	(((\$2,203)) <u>2,233</u>
3	(((\$2,184)) <u>2,213</u>	(((\$1,680)) <u>1,702</u>	(((\$511)) <u>504</u>	(((\$2,772)) <u>2,808</u>
4	(((\$2,633)) <u>2,665</u>	(((\$2,025)) <u>2,050</u>	(((\$649)) <u>640</u>	(((\$3,342)) <u>3,383</u>

EFFECTIVE ((10/1/2016)) 10/1/2017

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
5	((3,081)) <u>3,118</u>	((2,370)) <u>2,399</u>	((771)) <u>760</u>	((3,911)) <u>3,958</u>
6	((3,530)) <u>3,571</u>	((2,715)) <u>2,747</u>	((925)) <u>913</u>	((4,480)) <u>4,532</u>
7	((3,980)) <u>4,024</u>	((3,061)) <u>3,095</u>	((1,022)) <u>1,009</u>	((5,051)) <u>5,107</u>
8	((4,430)) <u>4,477</u>	((3,408)) <u>3,444</u>	((1,169)) <u>1,153</u>	((5,623)) <u>5,682</u>
9	((4,881)) <u>4,930</u>	((3,755)) <u>3,793</u>	((1,315)) <u>1,297</u>	((6,195)) <u>6,257</u>
10	((5,332)) <u>5,383</u>	((4,102)) <u>4,142</u>	((1,461)) <u>1,441</u>	((6,767)) <u>6,832</u>
Each Additional Member	((+451)) <u>+453</u>	((+347)) <u>+349</u>	((+146)) <u>+144</u>	((+572)) <u>+575</u>

(2) Exceptions:

(a) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C of subsection (1) of this section. We budget your AU's income to decide the amount of basic food your AU will receive.

(b) If your AU includes a member who is sixty years of age or older or has a disability, your AU's income must be at or below the limit in column C of subsection (1) of this section.

(c) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E of subsection (1) of this section to decide if you can be a separate AU.

(d) If your AU has zero income, your benefits are the maximum allotment in column D of subsection (1) of this section, based on the number of eligible members in your AU.

edu, fax 425-388-9228, office phone 425-388-9232, by November 20, 2017.

Assistance for Persons with Disabilities: Contact Jennifer Howard, phone 425-388-9232, fax 425-388-9228, TTY 425-388-9438, email jhoward@everettcc.edu, by November 20, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 132E-120-110 through 132E-120-390 are repealed and replaced with the following proposed rules and reasons why rules on this subject may be needed and what they might accomplish:

WAC 132E-122-010 Authority, clarifies the college's authority regarding the rights and responsibilities of students.

WAC 132E-122-020 Statement of jurisdiction, the academic affairs section is unchanged but moved to a different section number (180). The new section clarifies the jurisdiction of the conduct code.

WAC 132E-122-030 Preamble, the former section remains unchanged but is moved to a different section number (190). The new section adds a preamble to the conduct code identifying the college's purpose and governance.

WAC 132E-122-040 Civility statement, the student due process section has been adjusted as cited below. The new section adds a current campus wide policy to the conduct code.

WAC 132E-122-050 Nondiscrimination statement, the student affairs section remains unchanged but is moved to a different section number (200). The nondiscrimination statement moves this section of the conduct code forward and has been updated in accordance with changes in federal guidance documents.

WAC 132E-122-060 Definitions, the former policy section remains [unchanged] but has been moved to a different section (210). The new section provides definitions of terms used throughout the policy for the purpose of clarity.

WAC 132E-122-070 Statement of student rights, the former policy section remains [unchanged] but has been moved

WSR 17-21-028

PROPOSED RULES

EVERETT COMMUNITY COLLEGE

[Filed October 10, 2017, 12:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-12-031.

Title of Rule and Other Identifying Information: Everett Community College student code of conduct.

Hearing Location(s): On November 21, 2017, at 5 p.m., at the Jackson Center, Everett Community College, 2000 Tower Street, Everett, WA 98201.

Date of Intended Adoption: December 19, 2017.

Submit Written Comments to: Jennifer Howard, 2000 Tower Street, Everett, WA 98201, email jhoward@everettcc.edu.

to a different section (220). The new section identifies the rights of students under the conduct code.

WAC 132E-122-080 Academic affairs, the statement of purpose section has been removed as the key components are now included in the above listed sections and offer more clarity. The new section is a new section number only, the policy language has not changed.

WAC 132E-122-090 Academic grievance procedures, this is a new policy section number, however the policy title and language has not changed.

WAC 132E-122-100 Students as research subjects, the general policies concerning student conduct section has been updated in the below listed sections. The updates ensure the college's compliance with new state law requirements. The new section is a new section number only, the policy language has not changed.

WAC 132E-122-110 Student affairs, the former policy section remains [unchanged] but has been moved to a different section (230). The new section is a new section number only, the policy language has not changed.

WAC 132E-122-120 Student affairs grievance procedures, this is a new policy section number, however the policy title and language has not changed.

WAC 132E-122-130 Disclosure of student information, the former section has been clarified and broken into multiple sections (i.e. authority, jurisdiction, etc.). The new section is a new section number only, the policy language has not changed.

WAC 132E-122-140 College distribution of literature procedures, a new violations section has been written as an update, retitled as "prohibited student conduct" and moved to a different section (240). The new section is a new section number only, the policy language has not changed.

WAC 132E-122-150 Authority to request identification, a new sanctions section has been written as an update, retitled as "disciplinary sanctions,[" and moved to a different section (280). The new section is a new section number only, the policy language has not changed.

WAC 132E-122-160 Prohibited student conduct, a new disciplinary procedures section (310) has been written to comply with new state law (see below). Prohibited student conduct was given a new section name and updated as indicated above.

WAC 132E-122-170 Reporting—Sexual misconduct and discrimination, the former policy section remains [unchanged] but has been given a new section number (370). The new section clarifies how misconduct can be reported and requirements or [for] reporting.

WAC 132E-122-180 Confidentiality and right to privacy, the former policy section remains [unchanged] but has been given a new title, "Summary suspension—Notice," and section number (371). The new policy section informs students of the confidentiality provided to them and their right to privacy.

WAC 132E-122-190 Retaliation is prohibited, the former policy section remains [unchanged] but has been given a new title, "Summary suspension—Failure to appear," and section number (372). The new policy section updates retaliation as prohibited conduct, providing more clarity.

WAC 132E-122-200 Disciplinary sanctions, the former policy section remains [unchanged] but has been given a new title, "Summary suspension—Appeal," and section number (362). The new policy section updates policy language in accordance with legal advice.

WAC 132E-122-210 Terms and conditions, the former policy section has been moved to a new section number (360) and updated as noted below. The new policy section adds restitution, professional evaluation, and no contact/tress pass [trespass] order in compliance with Title IX guidance.

WAC 132E-122-220 Loss of eligibility—Student athletic participation, the former policy section has been updated and moved to a new title, "Appeals—All cases," and section number (330) as noted below. The new title is a section change only, no policy language has been changed.

WAC 132E-122-230 Standard of burden of proof, the former policy section has been updated and moved to a new section number (361) as noted below. The new policy section clarifies the burden of proof for all conduct cases; the burden of proof itself has not been changed.

WAC 132E-122-240 Initiation of disciplinary action—Non-Title IX, policy language regarding evidence admissible in hearings has been incorporated in the brief adjudication process sections in accordance with recently updated state law. The new title and policy language provides clarification on the brief adjudicative proceedings and ensures compliance with recently updated state law.

WAC 132E-122-250 Initiation of Title IX proceedings, the new section provides clarity on the proceedings for Title IX cases and how these proceedings differ from non-Title IX matters.

WAC 132E-122-260 Interim measures, the former policy information has been updated as noted below and moved to a different section number (353). The new section identifies interim measures as they pertain to matters involving sexual misconduct in compliance with Title IX regulations.

WAC 132E-122-270 Appeals—All cases, the former policy information has been updated to provide clarity and the policy language has been adjusted to comply with recently updated state law. The policy section has also moved (330). This policy section title has been updated to provide clarity and the policy language has been adjusted to comply with recently updated state law.

WAC 132E-122-280 Participation of advisors and attorneys, the former policy section remains [unchanged] but has been moved to a new section (390). The new policy section is new language providing information and clarity regarding student's right to an advocate and/or attorney and their participation throughout the conduct proceedings in this conduct code.

WAC 132E-122-290 Brief adjudicative proceedings—Initial hearing, the former section remains [unchanged] but has been moved to a new section (181). The new section has been updated to provide clarity on brief adjudicative proceedings and to ensure compliance with recently updated state law.

WAC 132E-122-300 Brief adjudicative proceedings—Review of initial decision, this is a new policy section developed to ensure compliance with recently updated state law.

WAC 132E-122-310 Full adjudicative proceedings—Student conduct committee, the former section remains [unchanged] but has been moved to a new section (201). The new policy section updates the current student conduct committee proceedings to ensure compliance with recently updated state law.

WAC 132E-122-320 Full adjudicative process—Pre-hearing procedure, this is a new policy section added to provide clarity in process and to ensure compliance with recently updated state law.

WAC 132E-122-330 Full adjudicative process—Hearing procedure, this is a new policy section added to provide clarity in process and to ensure compliance with recently updated state law.

WAC 132E-122-340 Full adjudicative process—Decision, this is a new policy section added [to] clarify the former policy section titled decision by student conduct committee and to ensure compliance with recently updated state law.

WAC 132E-122-350 Full adjudicative proceedings—Student conduct committee appeal, this is a new policy section added [to] clarify the former policy section titled decision by student conduct committee and to ensure compliance with recently updated state law.

WAC 132E-122-360 Summary suspension—Purpose and proceeding, the former section has been updated to ensure compliance with updated federal guidance and recently changed state law. The policy language has been embedded within multiple above-listed sections. The new title is a new policy section number only, the policy language remains the same.

WAC 132E-122-370 Summary suspension—Notice, this is a new policy section number, however the policy title and language has not changed.

WAC 132E-122-380 Summary suspension—For failure to appear, this is a new policy section number, however the policy title and language has not changed.

WAC 132E-122-390 Summary suspension—Appeal, this reflects the new case law established in December 2016 with respect to students' appeal rights.

WAC 132E-122-400 Readmission after dismissal, this policy is renumbered to align with the revisions in chapter 132E-122 WAC and was formerly WAC 132E-120-350.

Reasons Supporting Proposal: The proposed change creating chapter 132E-122 WAC reduces the college's liability and ensures our compliance with the law. As a result of these changes, students will have additional due process protections. Repealing WAC 132E-120-110 through 132E-120-390 maintains the history of those rules.

Statutory Authority for Adoption: RCW 28B.50.140.

Rule is necessary because of state court decision, *Arishi v. Washington State University*, No. 33306-0-111 (Wash. Ct. App. Dec. 1, 2016).

Name of Proponent: Everett Community College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Anthony Williams and Rebecca Lamboley, Everett Community College, 2000 Tower Street, Everett, WA 98201, 425-388-9187.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. No fiscal impact created by proposed language.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

October 10, 2017
Jennifer L. Howard
Vice President
Administrative Services

Chapter 132E-122 WAC

STUDENT RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 132E-122-010 Authority. (1) The Everett Community College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of instruction and student services or their designee(s). The conduct officer shall serve as the principal investigator and/or administrator for alleged violations of this code.

(2) The Title IX coordinator shall serve as the principal investigator and/or administrator for alleged violations of this code as it pertains to sexual misconduct and discrimination. The Title IX coordinator:

(a) Will accept all complaints of sexual misconduct and discrimination.

(b) May conduct investigations or assign investigators.

(c) May impose interim remedial measures to protect parties during investigation proceedings.

(d) Will make findings of fact on completed sexual misconduct or discrimination investigations.

(e) Will identify and address any patterns of systemic problems revealed by reports and/or complaints of sexual misconduct or discrimination.

(3) The college shall have authority to revoke a degree or other certificate of completion based on prohibited student conduct that is found to have occurred before the award of such degree or certificate.

NEW SECTION

WAC 132E-122-020 Statement of jurisdiction. (1) The student conduct code shall apply to student conduct that occurs:

(a) On college premises;

(b) At or in connection with college sponsored activities; or

(c) Off-campus or in noncollege electronic environment when such conduct is deemed to threaten the safety or security or otherwise adversely impacts the college community.

(2) Jurisdiction extends to, but is not limited to, locations in which students are engaged in official Everett Community

College (college) activities including, but not limited to, residence halls, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicum, supervised work experiences, or any other college-sanctioned social or club activities.

(3) Students are responsible for their conduct from notification of acceptance at the college through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.

(4) Student organizations affiliated with the college may also be sanctioned under this code for the conduct of their student members.

(5) These standards shall apply to a student's conduct even if the student withdraws from the college while a disciplinary matter is pending. The conduct officer or, in matters involving sexual misconduct, the Title IX coordinator has sole discretion, on a case-by-case basis, to determine whether the conduct code will be applied to conduct that occurs off campus.

(6) Nothing in this subsection shall be construed as being intended to protect any person or class of persons from injury or harm.

(7) Under this conduct code, the college shall not be required to stay disciplinary action pending any criminal or civil proceeding arising from the same conduct. The disposition of any such criminal or civil proceeding shall not control the outcome of any student disciplinary proceeding.

(8) Nothing in this conduct code will be construed to deny students their legally and/or constitutionally protected rights.

NEW SECTION

WAC 132E-122-030 Preamble. Everett Community College is a public institution responsible for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the college also has the obligation to maintain conditions conducive to the freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the college is governed by rules, regulations, policies, procedures, and standards of conduct, including this conduct code, that safeguard its functions and protect the rights and freedoms of all members of the college community.

NEW SECTION

WAC 132E-122-040 Civility statement. (1) Background.

(a) As members of the EvCC community, we acknowledge our collective intention to create and maintain an environment in which everyone can flourish. This statement on civility and community serves as a reflection on shared values that inform our daily interactions as a college. It provides a structure for responding to others with respect and without judgment and at the same time gives us all a context for teaching and learning. Students, faculty, administrators, and

staff members may differ widely in their specific interests, in the degrees and kinds of experiences they bring to EvCC, and in the functions which they have agreed to perform. The statement is relevant to all EvCC community members, regardless of their professional functions or the setting in which they work, teach, or learn.

(b) The statement on civility and community is not a set of rules that prescribe how we should act in all situations. Conflict and differences of opinion exist within all communities, and values find expression in individual ways. The statement provides community members with a tool to address these differences with respect while informing and enhancing dialogue.

(c) This statement on civility and community is not intended to limit freedom of speech, intellectual or academic freedom.

(d) We honor the right of expression as a hallmark of learning, and we treasure intellectual freedom even when individual or group points of view are controversial or out of favor with prevailing perspectives. Individuals should not feel intimidated, nor be subject to reprisal for, voicing their concerns or for participating in governance or policy making.

(2) Values.

(a)(i) Respect, civility, integrity, honesty.

(ii) Respect, civility, integrity and honesty are not just words; they are intentions that must be present in our interactions with one another. Each member of the EvCC community must feel free and safe to exercise the rights accorded them to voice their opinions in a civil way, as well as to respectfully challenge the uncivil acts of others.

(b)(i) Accountability.

(ii) We value our accountability to one another within our civic, communal and environmental context. Each member of the community shall respect the fundamental rights of others, the rights and obligations of Everett Community College as an institution established by the state of Washington, and individual rights to fair and equitable procedures when the institution acts to protect the safety of its members.

(c) Inclusion. We value diversity in all its forms by engaging in inclusive assessment of, and action in, our workforce selection, in our policies and practices, in our curricular offerings, and in the scope of our services and programs. We actively seek and serve a diverse population of students. As a community, we are made richer by the variety of experiences and influences that individuals and groups contribute to our institution.

(3) **Collaboration.** We value the struggle to find and create meaningful human connection in our communication by embracing collaboration, respectful disagreement, free and open exchange of diverse ideas, perspectives, opinions and attitudes, and the resolving of differences through due process and a shared commitment to collaboration.

NEW SECTION

WAC 132E-122-050 Nondiscrimination statement.
(1) Discrimination based on identity in Everett Community College programs, activities, admissions, or hiring is strictly prohibited.

(2) Everett Community College does not discriminate based on, but not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information.

(3) Any student, employee, applicant, or visitor who believes that they have been the subject of discrimination should report the incident(s) to the Title IX coordinator identified below. If the complaint is against the Title IX coordinator, the incident(s) should be reported to the vice president of administrative services.

Title IX coordinator
425-388-9271
TitleIXcoordinator@everettcc.edu
Olympus Hall Room 207
2000 Tower Street
Everett, WA 98201

Vice President of Administrative Services
425-388-9232
vpadmin@everettcc.edu
Olympus Hall Room 116
2000 Tower Street
Everett, WA 98201

NEW SECTION

WAC 132E-122-060 Definitions. For the purposes of this conduct code, the following definitions apply.

(1) **"Advisor"** is a person selected by a complainant or a respondent to provide support and guidance in hearings under this conduct code.

(2) **"Allegation of misconduct"** is any report of an alleged violation of this conduct code, which may include, but is not limited to, a police report, an incident report, a witness statement, other documentation, or a verbal report or written statement from a complainant or a third party.

(3) **"Attorney"** is a person permitted to practice law in the state of Washington.

(4) **"Business day"** means a weekday, including during the summer, and excludes weekends and college holidays, and/or college closures.

(5) **"College community"** includes all college students and employees. It also includes guests of and visitors to the college during the time they are present on college premises.

(6) **"College official"** is an employee of the college performing their assigned administrative, professional, or para-professional duties.

(7) **"College premises"** includes all campuses and electronic presences of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, computer systems, web sites, and other property owned, used, or controlled by the college.

(8) **"Complaint"** is a description of facts that allege violation of the conduct code.

(9) **"Complainant"** is any person who is the alleged victim of prohibited conduct, whether or not such person has made an actual complaint.

(10) **"Conduct officer"** or **"student conduct officer"** is the college official designated by the college to be responsible for initiating disciplinary action for alleged violations of this code.

(11) **"Disciplinary action"** means the decision of the designated college official regarding alleged violations of the student code of conduct and includes any disciplinary sanction imposed for such violations. Disciplinary action does not include summary suspension.

(12) **"FERPA"** refers to the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99).

(13) **"Filing and services."**

(a) **"Filing"** means the delivery to the designated college official of any document that is required to be filed under this code. A document is filed by hand delivering it or mailing it to the college official (or the official's assistant) at the official's office address. Filing is completed upon actual receipt during office hours at the office of the designated official.

(b) **"Service"** means the delivery to a party of any document that is required to be served under this code. A document is served by hand delivering it to the party or by mailing it to the party's address of record. Service is complete when the document is hand delivered or actually deposited in the mail.

(c) **"Electronic filing and services."** Unless otherwise provided, filing or services may be accomplished by electronic mail.

(14) **"Hostile environment"** may occur when another's unwelcome conduct of a sexual nature is sufficiently serious such that it substantially limits or denies one's ability to participate in or benefit from educational programs, activities, or employment.

(15) **"Investigation"** is the process through which the college collects information and otherwise reviews the complaint. As it pertains to reports of sexual misconduct under Title IX, this process includes equal opportunity for all complainants, respondents, and witnesses to participate in the Title IX proceedings, including the opportunity to provide information and/or evidence on their own behalf.

(16) **"Party"** to a disciplinary proceeding under this code includes the student conduct officer and the student respondent, as well as any complainant in a proceeding involving allegations of sexual misconduct.

(17) **"Policy violation"** means the violation of any applicable law or college policy governing the conduct of students as members of the college community.

(18) **"Preponderance of evidence"** is a standard of proof requiring that facts alleged as constituting a violation of this code must be proved on a more likely than not basis.

(19) **"Proceedings"** means all processes related to the investigation and adjudication of a disciplinary matter under this conduct code including, but not limited to, investigations, informal and formal hearings, administrative review, and requests for reconsideration of a final order.

(20) **"Resolution"** is the means by which the complaint is finally addressed. This may be accomplished by using methods which may include counseling, supporting, disciplinary action, or otherwise facilitating the resolution of the complaint. No Title IX complainant will be required to have

face-to-face interaction with the respondent in any resolution proceedings.

(21) "**Respondent**" is any student accused of misconduct under this conduct code.

(22) "**Service.**" See "**Filing and service.**"

(23) "**Student**" is 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. The term includes prospective students who have been accepted for admission or registration, currently enrolled students who withdraw before the end of a term, and students, including former students, who engage in prohibited conduct between terms of actual enrollment or before the awarding of a degree or other certificate of completion.

(24) "**Student organization**" is a group of students that has complied with the requirements for college recognition or who otherwise are granted any rights or privileges by the college as a college affiliate. Student organizations include, but are not limited to, athletic teams or clubs, registered student organizations, and college service clubs.

(25) "**Title IX coordinator**" is the college official designated by the college to be responsible for initiating disciplinary action for allegations of sexual misconduct and discrimination.

NEW SECTION

WAC 132E-122-070 Statement of student rights. (1) As members of the Everett Community College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

(2) The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college.

(a) **Academic freedom.**

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from discrimination, inappropriate and disrespectful conduct, and any and all harassment including sexual harassment.

(b) **Due process.**

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this conduct code is entitled, upon request, to procedural due process as set forth in the proceedings as outlined in this student code of conduct.

NEW SECTION

WAC 132E-122-080 Academic affairs. Students' scholastic performance shall be evaluated on the basis of educational performance, not on opinions or conduct in matters unrelated to scholastic standards.

(1) **Protection of freedom of expression.** Students shall be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course for which they are enrolled.

(2) **Right to pursue educational goals.** Students are free to pursue appropriate educational goals from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(3) **Protection against improper academic evaluation.** Students shall have protection, through orderly procedures, against prejudice or capricious academic evaluation. At the same time, they are responsible for maintaining the standards of academic performance established for each course in which they are enrolled (see academic grievance procedure in student hand book, WAC 132E-122-090).

(4) **Rights and responsibilities regarding final examinations.** Students have the right to have course comprehensive final examinations scheduled per the college's final exam schedule and are expected to take these examinations as scheduled by the final exam schedule. A comprehensive final examination is that which includes materials covered throughout the entire course. The exception to this rule applies during summer quarter when there is not a scheduled final examination week.

(5) **Right to attend classes as regularly scheduled.** Students have the right to expect classes to be held as regularly scheduled and are expected to attend such classes per the class instructor's attendance expectations as stated in the syllabus for the course.

(6) **Rights and responsibilities regarding course syllabi.** Students have the right to expect the class instructor to follow their course syllabus and if any changes are made to the grading system and/or course requirements during the quarter, the students must be promptly notified. If a different instructor is assigned to the class during the quarter, the original course syllabus shall be followed; however, if the new instructor determines a need to modify the syllabus for the portion of the class they are teaching, the students must be promptly notified. The students are responsible for reading and understanding the information provided in the course syllabus and any changes made to it during the quarter.

(7) **Protection against improper disclosure.** Information about student views, beliefs, and political associations acquired by faculty members in the course of their work as instructors, advisors, and counselors will be considered as privileged and confidential.

NEW SECTION

WAC 132E-122-090 Academic affairs grievance procedures. (1) **Definition of an academic grievance.** If a student has evidence that they have been: Unfairly treated in matters related to grading, course policies or expectation; falsely accused of cheating; or inappropriately penalized for alleged cheating, they may be said to have an academic grievance. Students who feel that such unfair treatment has transpired should feel free to raise the question of how such a grievance may be resolved with the office of the chief academic affairs officer or designee which will provide information (without judgment) regarding the procedure for filing an academic grievance. Students should also feel free to contact any member of the campus community who they trust who may assist the student and/or refer the student to the appropriate resource. In addition to the office of the chief academic affairs officer, the offices/centers that can generally be of the most assistance in terms of advice, support, and referral regarding these matters are the office of the chief student affairs officer, the offices of the academic deans, the office of the chief human resources officer, the chief diversity and equity officer, counseling services, center for disability services, Bridges learning center, student LIFE office, and campus safety and security.

(2) **Informal procedure resolution.** Informal complaints should be made to the appropriate division dean or supervising administrator. Upon receipt of a student complaint by the division dean, the following steps may be taken:

(a) The student will be encouraged to discuss the alleged problem with the involved instructor; or if the complaint involves a program, the student will be encouraged to speak to the director/dean of the involved program.

(b) If the student is not satisfied as a result of such discussion, they should then meet with the director/dean or supervising administrator.

(c) If the complaint is not resolved at this level, the student, the instructor and the director/dean should meet with the chief academic officer or designee to attempt resolution.

(d) If the complaint is not resolved at this level, the student may institute formal grievance procedures.

(e) During any meetings that occur in (a) through (c) of this subsection, the student may invite another person or two to be with them in the meeting. The other person(s) are present to assist and advise the student although an accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the director/dean of supervising administrator facilitating the meeting.

(3) **Formal grievance procedure.** Formal grievance procedure - To assure an atmosphere free from unfair treat-

ment in academic matters, the following procedures are established to respond to an unresolved academic complaint registered by a student. It is understood, however, that this procedure should be employed only after efforts have been made by the student to resolve the issue through the previously described informal procedure. A student who feels an academic grievance has not been resolved through the informal resolution process may file a formal grievance with the chief academic officer or designee prior to the last day of the quarter (not including summer) following the alleged grievance. Within ten business days of the receipt of the signed written grievance, the chief academic officer or designee will appoint a grievance committee for the purpose of reviewing that complaint and recommending a resolution.

(4) The grievance committee will be comprised of seven voting members including:

(a) An administrator who will serve as the chair but will only vote in the event of a tie vote.

(b) Three faculty members, including one from the division of the involved faculty member.

(c) Three students to be selected as provided for in the associated student constitution and bylaws.

(d) A quorum of the grievance shall be four members.

(e) All matters shall be discussed in closed meetings and shall be treated with strict confidence by the committee members.

(5) **Formal resolution.**

(a) Parties affected by the grievance will provide the grievance committee with all requested information in order to bring about full understanding and a speedy resolution to the grievance.

(b) In order to ensure due process, the aggrieved student shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(c) The instructor against whom the grievance is filed shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any members of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(d) Once the aggrieved student and the faculty member have had sufficient opportunity to present their points of view, the grievance committee will deliberate and reach decision by a simple majority vote. The committee will provide the chief academic officer or designee its written recommendation within ten business days of its organizational meeting. The chief academic officer or designee will notify the parties in the grievance of their decision, and the resolution within forty-eight hours of having received the committee recommendation.

(e) If the grievance committee establishes that an aggrieved student has been treated unfairly, the committee

will recommend corrective steps to the chief academic officer or designee.

(f) Either party shall have the right to present a written appeal of the decision to the chief academic officer or designee to the president of the college. Within one week of having received the appeal, the president shall review the case and render a decision which will be transmitted to both parties.

(g) An accommodation of a spokesperson (a person who would address the grievance committee, or assist the person in addressing the grievance committee) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the administrator chairing the committee.

NEW SECTION

WAC 132E-122-100 Students as research subjects.

(1) Permission may be granted for conduct of research involving students for such purposes as the pursuit of advanced degrees, classroom research, independent student research, and research for off-campus individuals and agencies. Participation therein is the choice of the individual student. Persons planning research on human subjects must secure permission in advance of the project from the institutional review board (IRB). Minimally such approval will entail:

(a) Assurance that the project does not conflict with examinations or require a major loss of classroom time;

(b) Assurance that students know they have the alternative of choosing to participate or not;

(c) Explanation of the purpose of the research and disclosure of all possible risks to which students might be exposed in the research and a thorough explanation of effects that will be employed to reduce those risks;

(d) Provision for students to have the opportunity to see the results of the research;

(e) Evidence that the research method is appropriate for the subject to be studied;

(f) Guarantee of confidentiality of student records and responses.

(2) Prior to the initiation of such a project, the researcher shall complete the IRB application and submit it to the institutional review board. Written permission may be given with or without college endorsement of the project. In such instances where the institutional review board deems appropriate, assistance may be sought from others with related knowledge before permission to proceed is granted or denied.

NEW SECTION

WAC 132E-122-110 Student affairs. (1) Freedom of association. Students are free to organize and join associations to promote their common interests, provided such organizations or associations do not disrupt or interfere with the mission of the college.

(a) The membership, policies, and actions of a student organization will be determined by vote of only those persons who hold bona fide membership in the student body as determined by current enrollment in the college.

(b) Affiliation with an external organization shall not of itself disqualify a student organization from institutional recognition.

(c) An organization is free to nominate its own advisor from the campus faculty and staff. Campus advisors shall advise organizations in the exercise of the rights and responsibilities as an organization, but they will not have authority to control the policies of such organizations.

(d) Student organizations shall be required to submit a constitution to the office of student activities which includes a statement of purpose, criteria for membership, rules or procedures, and a current list of officers to the student government recognized by the college.

(e) Campus organizations, including those affiliated with an extramural organization shall be open to all students.

(2) Right of assembly.

(a) Students have the right to conduct or may participate in any assembly on facilities that are generally available to the public provided that such assemblies:

(i) Are conducted in an orderly manner;

(ii) Do not unreasonably interfere with classes, scheduled meetings or ceremonies, or regular functions of the college;

(iii) Do not unreasonably interfere with pedestrian or vehicular travel; or

(iv) Do not cause destruction or damage to college property.

(b) Any student group or student organization/club which wishes to schedule an assembly must reserve the college facilities per the appropriate procedures.

(c) Assemblies which violate these rules and other college policies and rules may be ordered to disperse by the college.

(d) A nonstudent who violates any provision of the rule will be referred to civilian authorities.

(3) Student participation in institutional government.

Student participation in institutional government - As constituents of the educational community, students shall be free, individually and collectively, to express their views on issues of institutional policy and matters of general interest to the student body. The student body shall have a clearly defined means to participate in the formulation and application of institutional policy affecting academic and student affairs. The role of student government will be made explicit. The actions of the student government within the areas of jurisdiction shall be reviewed by the director of student LIFE and by the chief student affairs officer through orderly procedures.

(4) Right of ownership of works.

(5) Editorial independence of student publications policy. The college recognizes and affirms the editorial independence and press freedom of all student-edited campus media. The *Clipper* student newspaper and other student-provided media are therefore designated as public forums.

(6) Right to be interviewed.

(a) Every student has the right to be interviewed on campus by any legal organization desired to recruit at the college.

(b) Any student, student group, or student organization/club may assemble in protest against any such organization provided that such protest does not interfere with any

other student's right to have such an interview, and provided that such protests are in accordance with subsection (2) of this section.

NEW SECTION

WAC 132E-122-120 Student affairs grievance procedures. (1) **Definition of a student affairs grievance.** If a student has evidence that they have been unfairly treated in matters related to student services/student auxiliary services, policies, procedures, or expectations, they may be said to have a student affairs grievance. Students who feel that such unfair treatment has transpired should feel free to raise the question of how such a grievance may be resolved with the associated student executive council which will provide information (without judgment) regarding the procedure for filing a grievance. Students should also feel free to contact any member of the campus community who they trust that may assist the student and/or refer the student to the appropriate resources. In addition to the chief student affairs officer, the offices/centers that can generally be of the most assistance in terms of advice, support, and referral regarding these matters are the office of the chief academic affairs officer, the offices of the academic deans, and the office of the chief human resources officer, outreach, diversity and equity center, counseling and career center, center for disability services, Rainier learning center, student activities office, and campus safety and security.

(2) **Informal procedure for resolution.** Informal complaints should be made to the appropriate administrator. Upon receipt of a student complaint by the administrator, the following steps will be taken:

(a) The student will be encouraged to discuss the alleged problem with the party concerned; or if the complaint involves a program, the student will be encouraged to speak to the appropriate supervisor.

(b) If the student is not satisfied as a result of such discussion, they should then meet with the immediate administrator to resolve the complaint.

(c) If the complaint is not resolved at this level, the student, the respondent and the administrator should meet with the chief student affairs officer or the vice president under which the program/service is administratively aligned.

(d) If the complaint is not resolved at this level, the student may institute formal grievance procedures.

(3) **Formal grievance procedure.** To assure an atmosphere free from unfair treatment, the following procedures are established to respond to an unresolved complaint registered by a student. It is understood, however, that this procedure should be employed only after efforts have been made by the student to resolve the issue through the previously described informal procedure. A student who feels a grievance has not been resolved through the informal resolution process may file a formal grievance with the appropriate vice president or designee prior to the last instructional day of the quarter (not including summer) following the date of the alleged grievance. Within ten business days of receipt of the signed written grievance, the appropriate vice president or designee will appoint a grievance committee for the purpose of reviewing the complaint and recommending a resolution.

(4) **The grievance committee will be composed of seven voting members including:**

(a) An administrator (other than the appropriate vice president) who shall serve as the chair and vote only in the case of a tie;

(b) One faculty and two from classified staff;

(c) Three students to be selected randomly and not active members of student activities or the involved program;

(d) A quorum consists of four members of the grievance committee;

(e) All matters shall be discussed in closed meetings and shall be treated with strict confidence by the committee members.

(5) **Formal resolution.**

(a) Parties affected by the grievance will provide the grievance committee with all requested information in order to bring about full understanding and a speedy resolution to the grievance.

(b) In order to ensure due process, the aggrieved student shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved;

(iii) The harasser either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the victim; and

(iv) In fact renders the college environment (including the environment for employee students, and patrons) hostile, intimidation, or demeaning for the victim.

(c) The party against whom the grievance is filed shall have:

(i) The right to respond to the grievance, submitting appropriate evidence to support such response;

(ii) The opportunity to call as a witness any member of the college community who can provide information relevant to the allegation and interview the aggrieved student or any witness presented by the student(s) involved.

(d) Once the aggrieved student and the respondent have had sufficient opportunity to present their points of view, the grievance committee will deliberate and reach a decision by a simple majority vote. The committee will provide the appropriate vice president or designee its written recommendation within ten business days of its meeting.

(e) The appropriate vice president or designee will notify the parties in the grievance of the resolution within two business days of having received the committee recommendation. If the grievance committee establishes that aggrieved student has been treated unfairly, the committee will recommend corrective steps to the appropriate vice president or designee.

(f) Either party shall have the right to present a written appeal of the decision to the president of the college. Within one week of having received the appeal, the president shall review the case and render a decision which will be transmitted to both parties.

(g) During any meetings that occur in (a) through (f) of this subsection, the student may invite another person or two to be with them in the meeting. The other person(s) are pres-

ent to assist and advise the student although an accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the director/dean or supervising administrator facilitating the meeting.

NEW SECTION

WAC 132E-122-130 Disclosure of student information. (1) Unless the student has provided the office of enrollment services with written notice which specifically requests otherwise, designated officials of the college may routinely respond to requests for the following directory information about a student:

- (a) Student's name;
- (b) Major field of study;
- (c) Extracurricular activities;
- (d) Height and weight of athletic team members;
- (e) Quarters of attendance;
- (f) Degrees and awards received;
- (g) The most recent previous educational agency or institutions attended;
- (h) Date of birth;
- (i) Email address;
- (j) Student enrollment status.

(2) Recognized college student organizations, such as scholastic and service clubs, may obtain information relating to a student's academic record and status; requests of this nature are handled on an individual basis and only through the organization's appointed advisor. Pursuant to the National Defense Authorization Act for Fiscal Year 1995, the college must release directory information to military recruiters unless the student specifically denies permission. The college shares selected records with organizations with which the college has contractual agreements for services. The college may also release enrollment data for loan processing, enrollment and degree verification, and records archiving purposes through contractual agreements, and to other schools in which a student seeks or intends to enroll. The college releases Social Security and enrollment data to the Federal Government for Financial Aid and Veterans' eligibility evaluation and for Hope Scholarship/Lifetime Learning tax credit programs. The college may release records following a receipt of a lawfully issued subpoena, attempting to notify the student beforehand. The college does not disclose records to family members without student consent.

(3) No other information is to be given without the prior consent of the student or parent/guardian as appropriate. The college registrar or their designee will be responsible for reviewing unusual requests for information and assistance in the interpretation of the provisions of the Federal Family Educational Rights and Privacy Act (Buckley Amendment). See Family Educational Rights and Privacy Act of 1974 in the student handbook for more information on confidentiality of student information and records.

NEW SECTION

WAC 132E-122-140 College distribution of literature procedures. In order to ensure an atmosphere in which the discussion of diverse points of view and ideas may exist, the following policy with regard to the distribution of printed matter will be implemented.

(1) Printed matter by students and student organizations may be distributed in an orderly and nonforceful manner in only such areas as may be designated by the chief student affairs officer or designee except that:

(a) Noninstructional printed matter shall not be distributed in the classroom during regularly scheduled class time unless otherwise approved by the class instructor. Exceptions to this procedure may be made for special educational purposes and/or emergencies by the president, chief student affairs officer, or designee. If and when this occurs, the class instructor, appropriate academic dean, and students in the class shall be notified in a timely fashion;

(b) Printed matter shall not be distributed in college buildings other than in specifically designated areas or in any area where the distribution of printed matter would restrict the physical passage of students or interfere with the instructional program and administrative and student support functions unless otherwise approved on a temporary basis for a specific informational purpose by the chief student affairs officer or designee;

(c) Printed matter shall not be placed on any vehicle parked on the campus;

(d) Posters and advertising bulletins must be approved before they may be posted on campus, and they shall be posted only informational display boards/areas designated for this purpose. In general, students have the right to display posters and advertising bulletins and are expected to do so per the campus posting procedures. Class projects by students to be displayed outside of the classroom must be on designated boards or areas designated for this purpose and approved by the class instructor. Posters and advertising generated for student activity related events and programs must be approved for posting by the office of student activities. Posting rules and guidelines may change periodically and in some cases be specific to a building and/or area of the campus. In general, material concerning off-campus activities will not be approved unless it is determined to be special services to EvCC students;

(e) In addition, designated points of distribution will be made available on campus.

(2) As to content of printed matter, the college will be guided by state and federal laws and principles regarding free speech.

(3) A system of prior censorship is to be avoided if at all possible. Therefore, maximum cooperation of students, faculty and administration will be necessary. Matters of interpretation regarding these procedures and questions as to content of any displayed material will be handled by the chief of student affairs officers.

(4) Printed matter originating with an off-campus individual(s) or organization must be registered with the director of student activities before distribution will be permitted.

NEW SECTION

WAC 132E-122-150 Authority to request identification. In situations of suspected misconduct or suspected unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from a properly identified college personnel is a violation of this chapter and may result in disciplinary action if the person is found to be a student. In emergency situations or in cases of serious misconduct where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by the college personnel that the person questioned is not a student and may result in direct civil or criminal action.

NEW SECTION

WAC 132E-122-160 Prohibited student conduct. Prohibited student conduct includes engaging in, attempting to engage in, or encouraging or assisting another person to engage in, any of the conduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means. The term "includes" or "including" as used in this sections means "without limitation."

(1) **Abuse of others.** Assault, battery, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health and safety of another person or another person's property.

(2) **Abuse of the student conduct process.** Abuse of the student conduct process includes:

(a) Knowingly making false allegations of misconduct under this conduct code;

(b) Attempting to coerce a person not to make a report or to participate in proceedings under this conduct code;

(c) Attempting to influence the impartiality or participation of a campus official or party of a campus disciplinary proceeding; or

(d) Influencing or attempting to influence another person to commit an abuse of the student conduct process.

(3) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to:

(a) **Cheating** including, but not limited to, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(b) **Plagiarism** including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.

(c) **Unauthorized collaboration** including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.

(d) **Academic dishonesty** including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that

falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

(4) **Aiding, solicitation, and attempt.** The following conduct is prohibited:

(a) Aiding or abetting another student or student organization in the commission of any misconduct prohibited by this conduct code;

(b) Requesting, hiring, or encouraging another person to commit any act of misconduct prohibited by this conduct code, either intending that the other person commit the misconduct or with the knowledge that the other person intends to commit the misconduct; or

(c) Attempting to commit any act of misconduct prohibited by this conduct code.

(5) **Alcohol, other drug, and tobacco violations.** The unlawful possession, use, distribution, or manufacture of alcohol is prohibited. The conduct officer may elect not to initiate disciplinary action under this subsection against a student who, while in the course of helping another student seek medical assistance, admits to the unlawful possession or use of alcohol. Generally, no disciplinary action under this subsection will be initiated against a complainant or another reporting student, who admits to the possession or use of alcohol (in violation of this subsection) in connection with an incident of sexual misconduct.

(6) **Alcohol, other drugs, and tobacco violations.**

(a) **Alcohol.** An alcohol violation includes using, possessing, delivering, selling, or being under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** A marijuana violation includes using, possessing, delivering, selling, or being 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 any possession or use of marijuana on college premises or in connection with college activities.

(c) **Other drugs.** A drug violation includes using, possessing, delivering, selling, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** A tobacco violation means smoking or using tobacco products, electronic smoking devices (including e-cigarettes or vape pens), or other smoking devices in any area of college premises where smoking or tobacco use is prohibited in accordance with public law and college policy.

(7) **Computer abuses.** Computer abuses include, but are not limited to:

(a) Unauthorized use of college computer resources;

(b) Use of another person's college user name and/or password;

(c) Use of college computing facilities and resources to interfere with the work of another student, an instructor, or other college official;

(d) Use of college computing facilities or resources to send intimidating, harassing, or threatening messages;

(e) Use of a computer or software to interfere with normal operations of the college's computing systems;

(f) Use of the college's computing facilities or resources in violation of any law, including copyright laws; and

(g) Any violation of the college's computer use policies.

(8) **Creating a public nuisance in neighboring communities.** In furtherance of the college's interest in maintaining positive relationships with its surrounding communities, the college shall have the authority to hold students accountable under this conduct code for misconduct within any residential or commercial communities adjacent to a college campus as follows:

(a) A student or a student organization may be subject to disciplinary proceedings if the college is made aware that the student or student organization has been contacted by a law enforcement agency regarding, and is determined to have engaged in, conduct that is in violation of a state statute or municipal ordinance and has a direct quality of life impact on community residents or businesses including, but not limited to: Creating a public nuisance due to noise, residential disturbance, intentional destruction of property, urinating in public, or criminal trespass.

(b) A first minor violation under (a) of this subsection will not subject the student or student organization to disciplinary sanctions under this conduct code; however, the student or student organization may receive a letter regarding the expectations of college community members as residents in the area. This letter shall constitute a warning that repeated misconduct under this subsection may result in the imposition of disciplinary sanctions.

(c) A second violation of this subsection will result in the initiation of disciplinary proceedings under this conduct code.

(9) **Discrimination.** Discrimination is unfavorable treatment of a person based on that person's identity as described in the nondiscrimination policy (WAC 132E-122-050). **Sex discrimination** is conduct which harms or adversely affects any member of the college community because of their sex, actual or perceived sexual orientation, gender identity or expression, parental, family or marital status, or pregnancy.

(10) **Discriminatory harassment.** Discriminatory harassment is language or conduct directed at a person because of the person's identity that is unwelcome and sufficiently severe, persistent, or pervasive such that it could reasonably be expected to create an intimidating, hostile, or offensive environment, or has the purpose or effect of unreasonably interfering with a person's academic or work performance, or the person's ability to participate in or benefit from the college's programs, services, opportunities, or activities.

(11) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, research, administrative, or other functions, procedures, services, programs, or activities of the college. The term includes disorderly

conduct, breach of the peace, violation of local or college noise policies, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, tampering with student election processes, or interfering with the orderly conduct of college investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(12) **Domestic violence.** Domestic violence includes:

(a) The infliction of physical harm, bodily injury, assault, or the fear of imminent physical harm, bodily injury or assault committed against a family or household member. Family or household members include:

(i) A current or former spouse or intimate partner;

(ii) A person with whom the person shares a child in common;

(iii) A person with whom one is cohabitating or has cohabitated; or

(iv) A person with whom one resides including a roommate, suitemate, or housemate.

(b) Sexual assault of one family or household member by another family or household member; or

(c) Stalking, as defined under sexual misconduct below, of one family or household member by another family or household member.

(13) **Ethics violations.** An ethics violation includes the breach of any applicable code of ethics or standard of professional practice governing the conduct of a profession for which the student is studying to be licensed or certified. The term also includes the violation of any state law or college policy relating to the ethical use of college resources.

(14) **Failure to comply.** Failure to comply means refusing to obey the lawful directive of a college official or authorized college body, including a failure to identify oneself upon request, refusing to comply with a disciplinary sanction, or violating any no-contact or other protective order.

(15) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of college records, furnishing false or misleading information to the college, falsely claiming an academic credential, or falsely accusing any person of misconduct.

(16) **Gender-based harassment.** Gender-based harassment is a form of sex-based harassment and refers to unwelcome conduct based on an individual's actual or perceived sex, including harassment based on gender identity or non-conformity with sex stereotypes, and not necessarily involving conduct of a sexual nature.

(17) **Harassment.**

(a) Harassment means unwelcome and offensive conduct including verbal, nonverbal, or physical conduct that is directed at a person because of their membership of a protected identity under this student code of conduct. Unwelcome and offensive conduct is considered harassment when:

(i) It is sufficiently serious as to deny or limit the ability of a student to participate in or benefit from the college's educational program; or

(ii) That creates an intimidating, hostile, or offensive environment for any campus community members.

(b) 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 harassment include, but are not limited to, the following:

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

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

(iii) Making, posting, emailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to the person's membership of a protected identity.

(c) Protected identities under this student code of conduct (as cited in the nondiscrimination policy, WAC 132E-122-050) include, but are not limited to, race, color, national origin, citizenship, ethnicity, language, culture, age, sex, gender identity or expression, sexual orientation, pregnancy or parental status, marital status, actual or perceived disability, use of service animal, economic status, military or veteran status, spirituality or religion, or genetic information.

(18) Hazing.

(a) Hazing includes any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person. Hazing activities may include, but are not limited to, encouraging or promoting the abuse of alcohol; striking another person whether by use of any object or any part of one's body; causing someone to experience excessive fatigue or physical and/or psychological shock; and causing someone to engage in degrading or humiliating games or activities that create a risk of serious mental, emotional, and/or physical harm.

(b) Consent of a victim or victims is not a defense to an allegation of hazing.

(c) Hazing does not include generally accepted practice, training, and conditioning activities, or activities reasonably designed to test a participant's ability to meet eligibility requirements for established athletic events such as intramural or club sports, intercollegiate athletics, or other similar contests or competitions.

(19) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(20) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal

financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(21) **Retaliation.** The term "retaliation" means harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(22) **Safety violations.** The term "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.

(23) **Sexual misconduct.** Sexual misconduct includes committing, or aiding, soliciting, or attempting the commission of, the following prohibited conduct: Sexual harassment, sexual intimidation, sexual violence and quid pro quo.

(24) **Sexual harassment.** Sexual harassment includes, but is not limited to, 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, based on sex:

(a) The ability of a student to participate in or benefit from the college's educational program; or

(b) That creates an intimidating, hostile, or offensive environment for any campus community member(s).

Examples of behaviors that may rise to the level of sexual harassment include, but are not limited to:

(i) Physical assault.

(ii) A pattern of behaviors that is unwelcome and severe, persistent, or pervasive, resulting in unreasonable interference with the work or educational environment, and may include, but is not limited to, the following:

(A) Comments of a sexual nature;

(B) Sexually explicit statements, questions, jokes, or anecdotes;

(C) Unnecessary or undesirable touching, patting, hugging, kissing, or brushing against an individual's body;

(D) Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences;

(E) Persistent, unwanted attempts to change a professional relationship to an amorous relationship;

(F) Subtle propositions for sexual activity or direct propositions of a sexual nature;

(G) Uninvited letters, emails, telephone calls, or other correspondence referring to or depicting sexual activities.

(25) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for such person's

safety or the safety of others, or to suffer substantial emotional distress.

(26) **Sexual violence.** Sexual violence incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated against a person's will or where the person is incapable of giving consent, including dating violence, domestic violence, nonconsensual intercourse (rape), non-consensual sexual contact (sexual assault), and stalking. 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, unconsciousness, or other cause.

(a) **"Consent"** is 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.

(b) **"Dating violence"** means violence by a person who has been in a romantic or intimate relationship with that person. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(c) **"Domestic violence"** includes asserted violent misdemeanor and felony offenses committed by the person's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence laws, or anyone else protected under domestic or family violence law.

(d) **"Nonconsensual sexual intercourse (rape)"** 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.

(e) **"Nonconsensual sexual contact (sexual assault)"** is any intentional sexual contact, however slight, with any object, by a person upon another person that is without consent and/or by force. "Sexual contact" includes any touching of another person for the purposes of sexual gratification, or any penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ, of another person.

(f) **"Stalking"** means intentional and repeated harassment, following of, or otherwise surveilling 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.

(i) The person being harassed or followed is placed in **reasonable fear** that the stalker intends to injure the person, another person, or property of the person or of another person.

(ii) **"Reasonable fear"** is a fear that a reasonable person in the same situation would experience under most circumstances.

(27) **Quid pro quo.** Quid pro quo occurs when an individual in a position of real or perceived authority conditions the recipient of a benefit upon granting sexual favors. Examples of conduct that may qualify include:

(a) Persistent comments or questions of a sexual nature.

(b) A supervisor who gives an employee a promotion or special privileges in exchange for sexual favors.

(c) Sexually explicit statements, questions, jokes, or anecdotes.

(d) Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.

(e) Remarks of a sexual nature about an individual's clothing, body, or speculation about previous sexual experiences.

(f) Persistent, unwanted attempts to change a professional relationship to a romantic relationship.

(g) Direct or indirect propositions for sexual activity.

(h) Unwelcome letters, emails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(28) **Sexual exploitation.** Sexual exploitation includes:

(a) Taking nonconsensual or abusive advantage of another for one's own sexual benefit, or for the sexual benefit of anyone other than the one being exploited;

(b) Compelling another by threat or force to engage in sexual conduct or activity;

(c) Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, or other recordings of a private and sexual nature where such transmission, publication, or distribution is without the consent of the subject(s) and is likely to cause emotional distress to the subject(s);

(d) Taking or making photographs, films, or digital images of the private body parts of another person without that person's consent;

(e) Causing or attempting to cause the impairment of another person to gain nonconsensual sexual advantage over that person;

(f) Prostituting another person;

(g) Knowingly allowing another to surreptitiously watch otherwise consensual sexual activity; or

(h) Taking, making, or directly transmitting nonconsensual video or audio recordings of sexual activity.

(29) **Theft.** Theft is the taking of property or services without express permission of the owner. This includes, but is not limited to, taking, possessing, or aiding another to take university property or services, or property belonging to members of the university community.

(30) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the college or the property of another person, including any facility, computer system, email account, or electronic or paper files. Unauthorized

access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

(31) **Unauthorized recording.** The following conduct is prohibited:

(a) Making audio, video, digital recordings, or photographic images of a person without that person's consent in a location where that person has a reasonable expectation of privacy.

(b) Storing, sharing, publishing, or otherwise distributing such recordings or images by any means.

(32) **Vandalism.** Vandalism includes maliciously damaging or misusing university property, or the property of any member of the university community.

(33) **Violation of disciplinary sanctions.** The violation of any term or condition of any final disciplinary order issued under this conduct code, or the failure to complete a disciplinary sanction in the specified time frame, may be grounds for additional disciplinary action.

(34) **Violation of law.** Any conduct that would constitute a violation of any federal, state, or local criminal law may be the subject of disciplinary proceedings under this conduct code.

(35) **Weapons violations.** A "weapons violation" includes the possession, display, or use of any firearm, explosive, dangerous chemical, knife, or other instrument capable of inflicting serious bodily harm in circumstances that are reasonably perceived as causing alarm for the safety of any person. The term "weapons violation" includes any threat to use a weapon to harm any person and the use of any fake weapon or replica to cause the apprehension of harm. The term further includes the possession on college premises of any firearm or other dangerous weapon in violation of public law or college policy, but does not include the lawful possession of any personal protection spray device authorized under RCW 9.91.160. Examples include, but are not limited to:

(a) Firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities are not permitted on campus premises, except for authorized campus purposes, or unless prior written approval has been obtained from the director of campus safety and security, or any other college official designated by the president.

(b) Firearms include, but are not limited to, what are commonly known as air guns or rifles, BB guns, and pellet guns, and any instrument used in the propulsion of shot, shell, bullets, or other harmful objects by:

- (i) The action of gunpowder or other explosives;
- (ii) The action of compressed air; or
- (iii) The power of springs or other forms of propulsion.

(c) The exhibition or display of a replica or a dangerous weapon prohibited under this subsection is also prohibited if done in a manner, and at a time or place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

NEW SECTION

WAC 132E-122-170 Reporting—Sexual misconduct and discrimination. (1) Persons who believe that a sexual misconduct or discrimination violation has been committed

may contact and make a report to the Title IX coordinator directly or by filing a report online at everettcc.edu/TitleIX.

Becky Lamboley
Title IX coordinator
425-388-9271
TitleIXcoordinator@everettcc.edu
Olympus Hall 207
2000 Tower Street
Everett, WA 98201

(2) The person filing the report will be asked to write a brief statement of allegation(s), including dates, names, a description of the incident, and the remedy sought.

(3) **Sexual misconduct responsible employee reporting.** Any employee who receives a report, formally or informally, of an alleged Title IX violation is required to report such information the Title IX coordinator. The employee may contact the Title IX coordinator directly (TitleIXcoordinator@everettcc.edu or 425-388-9271) or may file a Title IX report through the college online reporting system.

(4) **Campus counselors.** If information regarding a possible sexual misconduct violation is disclosed during a confidential counseling session with a campus counselor, the counselor is not required to report this information to the Title IX coordinator.

(5) If the complaint is against the conduct officer or Title IX coordinator, the matter is to be reported to the vice president of administrative services.

Vice President of Administrative Services
vpadmin@everettcc.edu
425-388-9232
2000 Tower Street
Everett, WA 98201

NEW SECTION

WAC 132E-122-180 Confidentiality and right to privacy. (1) Everett Community College will seek to protect the privacy of the involved parties to the full extent possible, consistent with the legal obligation to investigate, take appropriate remediate action, and comply with the federal and state law, as well as other college policies and procedures.

(2) Confidentiality request and sexual violence complaints.

(a) The Title IX coordinator will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- (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.
- (vi) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).
- (b) Although the college will attempt to honor any complainants' request for confidentiality (i.e., for their name not to be revealed to the respondent or that the college not investigate the allegation), the college cannot guarantee complete confidentiality.
- (c) Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.
- (d) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision prior to proceeding and will ensure that the complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.
- (e) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence, and implement such measures if reasonably feasible.

NEW SECTION

WAC 132E-122-190 Retaliation is prohibited. (1) Retaliation by, for, or against any participant (i.e., complainant, respondent, witness, Title IX coordinator, investigator) is expressly prohibited and is conduct subject to discipline. Retaliatory action of any kind taken against individuals as a result of participation in proceedings under this conduct code including, but not limited to, serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline.

(2) If you are retaliated against, contact the conduct officer awilliams@everettcc.edu or 425-388-9282 or Title IX coordinator at TitleIXcoordinator@everettcc.edu or 425-388-9271. If you believe the conduct officer or Title IX coordinator has retaliated against you, contact the vice president of administrative services at vpadmin@everettcc.edu or 425-388-9232.

NEW SECTION

WAC 132E-122-200 Disciplinary sanctions. Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

(1) **Warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Reprimand.** Notice in writing that the student has violated one or more terms of the college's conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Probation.** Formal action placing specific conditions and restrictions upon the student's continued attendance and/or enrollment, and/or participation in college programs or activities, depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student is subject to a deferred disciplinary sanction and is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance and/or enrollment at the college.

(4) **Suspension.** Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.

(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 sanction is taken.

(6) **Other sanctions.** The following additional sanctions for conduct code violations may be imposed as required or permitted by law or college policy.

(a) **Athletic eligibility.** A student athlete found in violation of WAC 132E-122-160, relating to drug violations, shall be ineligible to participate in college athletics pursuant to RCW 69.41.340.

(b) **Parental notification.** The college reserves the right to inform a student's parent(s) or legal guardian(s) of the student's misconduct to the extent permitted by applicable law.

NEW SECTION

WAC 132E-122-210 Terms and conditions. Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a sanction(s) include, but are not limited to, the following:

(1) **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.

(2) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as approved by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. A stu-

dent may not return to campus if the evaluation indicates that the student is not capable of functioning within the college community, or if the evaluation lacks information for the college to make reasonable accommodations, or until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(3) **No contact/trespass order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility for a stated period of time.

NEW SECTION

WAC 132E-122-220 Loss of eligibility—Student athletic participation. Grounds for ineligibility. Any student found by the college to have violated chapter 69.41 RCW by virtue of a criminal conviction or otherwise insofar as it prohibits the possession, use or sale of legend drugs, including anabolic steroids, will be disqualified from participation in any school-sponsored athletic event or activity.

NEW SECTION

WAC 132E-122-230 Standard of burden of proof. The applicable standard of proof in all disciplinary hearings (including those involving sexual misconduct and appeals) is the "preponderance of evidence" standard. This means that, in order for a respondent to be held responsible for a violation of this conduct code, the conduct officer, Title IX coordinator, conduct review officer, student conduct committee, or vice president of instruction and student services must conclude, based on all of the evidence in the record, that it is more likely than not that the respondent engaged in an act or acts of misconduct.

NEW SECTION

WAC 132E-122-240 Initiation of disciplinary action—Non-Title IX. (1) **Written notice.** The conduct officer will initiate disciplinary action by serving the respondent with written notice of an initial disciplinary meeting. The notice shall briefly describe the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, the range of possible sanctions for such violation(s), and specify the time and location of the meeting.

(2) **Disciplinary meeting.** At the disciplinary meeting, the conduct officer will review the allegations with the respondent and, consistent with "Brief Adjudicative Proceedings" under RCW 34.05.482, will afford the respondent an opportunity to respond and provide any other information or evidence. If the respondent fails to attend or participate in the meeting, the conduct officer may take disciplinary action based on the available information.

(3) Within ten business days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or arguments presented by the respondent, the conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting their decision, the specific code of conduct provisions found to have been violated, the discipline imposed (if any),

and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) Following written notice and a disciplinary or investigation meeting, the conduct officer will take any of the following actions:

(a) Dismiss the proceeding upon finding the allegation(s) to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review.

(b) If the allegations are found to be substantiated, the conduct officer may impose any of the disciplinary sanctions authorized under WAC 132E-122-200. Such sanction(s) shall be subject to review on appeal as provided in this student code.

(c) Refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of the committee chair, with a copy served to the respondent. The decision to refer shall not be subject to appeal or further review.

NEW SECTION

WAC 132E-122-250 Initiation of Title IX proceedings. Title IX includes, but is not limited to, the following prohibited student conduct: Domestic violence, gender-based harassment, sex discrimination, sexual harassment, sexual intimidation, sexual violence including dating violence, non-consensual sexual intercourse (rape), nonconsensual sexual contact (sexual assault), and stalking, quid pro quo, and sexual exploitation.

(1) **Written notice.** In matters involving alleged sexual misconduct, the Title IX coordinator will initiate investigation proceedings by serving the respondent with a written notice of the factual allegations, the specific conduct code provision(s) the respondent is alleged to have violated, and the range of possible sanctions for such violation(s). The Title IX coordinator will include notification that an investigation is taking place and, if applicable, identify the designated Title IX investigator(s) assigned to the case.

(2) **Investigation meeting.** For matters involving sexual misconduct, the complainant, respondent, and, as applicable, witnesses will be asked to attend an investigation meeting. At the investigation meeting, the Title IX coordinator or designated Title IX investigator(s), will review the investigation proceedings, ask each party questions regarding the allegations, and consistent with "Brief Adjudicative Proceedings" under RCW 34.05.482, afford each party the opportunity to provide any other information or evidence.

If the respondent fails to attend or participate in the meeting, the Title IX coordinator or designated Title IX investigator(s), may proceed with the investigation, including making findings regarding the alleged policy violations, based on the available information.

(3) Following written notice and an investigation meeting, the Title IX coordinator may take any of the following actions:

(a) Dismiss the proceeding upon finding the allegation(s) to be unsubstantiated and after providing any appropriate counseling or warnings. Such action shall be final and not subject to appeal or further review.

(b) Refer the matter for disciplinary action by the student conduct committee. Such referral shall be in writing, to the attention of the committee chair, with a copy served to the complainant and respondent. The decision to refer shall not be subject to appeal or further review.

(c) If the allegations are found to be substantiated, the Title IX coordinator may provide the complainant and respondent with a copy of the investigation report with the option to review the report and provide a response.

(4) **Findings.** If the allegations are found to be substantiated, the Title IX coordinator will review all of the information gathered throughout the investigation proceedings and make findings of fact for each alleged policy violation. The Title IX coordinator will notify the complainant and the respondent of these findings in writing and that the matter is being referred to the conduct officer, for matters involving only students, or the vice president of administrative services, for matters involving one or more employees, for initiation of disciplinary action.

(5) On the same date that a disciplinary decision is served on the respondent, the conduct officer or vice president of administrative services will serve a written notice informing the complainant 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 their appeal rights. If protective sanctions and/or conditions are imposed, the conduct officer or vice president shall make a reasonable effort to contact the complainant to ensure the prompt notice of the protective disciplinary sanctions and/or conditions.

(6) Each party involved in sexual misconduct proceedings may appear alone or with another to advise and assist them during any conduct proceeding as outlined in WAC 132E-122-260.

NEW SECTION

WAC 132E-122-260 Interim measures. (1) After receiving a report of alleged sexual misconduct or other serious misconduct, the college may implement interim measures which may include, but are not limited to:

(a) A no-contact order prohibiting direct or indirect contact, by any means, with a complainant, a respondent, a reporting student, or other specified persons, and/or a specific student organization;

(b) Reassignment of on-campus housing; or

(c) Changes to class schedules, assignments, or test schedules.

(2) Interim measures will remain in place until lifted or modified by the campus official who implemented the interim measures.

(3) Implementation of any interim measure does not assume any determination of, or create any presumption regarding responsibility for, a violation under this conduct code.

NEW SECTION

WAC 132E-122-270 Appeals—All cases. The following general rules apply to appeals of disciplinary action at any stage of the student disciplinary proceeding.

(1) **Parties.** The parties to an appeal shall be the respondent, and complainant in a proceeding involving sexual misconduct allegations, and the designated appeal authority.

(2) **Filing appeals.**

(a) **Appeal periods.** The respondent may appeal a disciplinary action by filing a written notice of appeal with the designated college official within ten business days of services of the conduct officer's decision.

(b) **Contents of appeal.** A party's written notice of appeal must clearly state the reason(s) for the appeal or request for review and provide any relevant information to support the appeal.

(c) **Issues that may be raised on an appeal.** The issues that may be raised on an appeal include: New information, contradictory information, and information indicating that the party was not afforded due process.

(d) **Failure to appeal.** The failure of a party to file a timely appeal at any stage of the proceeding waives that party's right to appeal.

(e) **Cases involving allegations of sexual misconduct.** The complainant and respondent have equal appeal rights in cases involving allegations of sexual misconduct, including filing an appeal, notice of appeal, participation in any appeal proceedings, and notification of appeal outcome.

(3) **Notification of appeal.** In proceedings involving allegations of sexual misconduct, if any party appeals, the designated appeal authority will notify the other party(ies) of such. Each party shall be afforded the opportunity to participate in the appeal proceedings.

(4) **Effect of appeal - Stay.** The implementation of disciplinary action imposing a suspension of any length or imposing expulsion shall be stayed pending the time for filing an appeal and the conclusion of disciplinary proceedings. Other disciplinary sanctions shall not be stayed.

(5)(a) **Appeal authorities.** Appeals of disciplinary action taken by the conduct officer shall be submitted to and heard by the student conduct committee (EMAIL, 2000 Tower Street, Everett, WA 98201).

(b) Appeals of disciplinary action taken by the student conduct committee shall be submitted to and heard by the vice president of instruction and student services (gmiulli@everettcc.edu, 2000 Tower Street, Everett, WA 98201).

(6) **Ex parte communications.** Appeal authorities may not communicate with any of the parties regarding an appeal without first providing notice of the filed appeal and an equal opportunity for all parties to participate.

(7) **Disqualification.** Appeal authorities may not participate in a proceeding in which they:

(a) Are a respondent, complainant, or witness.

(b) Have a direct or personal interest, prejudice, or bias; or

(c) Have acted previously in another capacity.

(8) The student conduct committee shall conduct full adjudicative hearings arising from appeals from:

(a) The imposition of disciplinary suspension in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the conduct officer, the conduct review officer, or vice president.

(9) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspension of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimand; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(10) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

(11) In cases involving allegations of sexual misconduct, the complainant has the right to appeal the following actions by the conduct officer following the same procedures as set forth above for the respondent:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including disciplinary warning.

NEW SECTION

WAC 132E-122-280 Participation of advisors and attorneys. (1) Each party involved in sexual misconduct proceedings may appear alone or with another to advise and assist them during any conduct proceeding.

(2) Any advisor who accompanies the complainant, respondent, or witness may provide support or guidance but may not speak, represent, or advocate on their behalf during sexual misconduct proceedings with the exception of full adjudication proceedings (WAC 132E-122-290 through 132E-122-350).

(3) An advisor may not delay, disrupt, or otherwise interfere with proceedings.

(4) An accommodation of a spokesperson (a person who would address the college official, or assist the person in addressing the college official) may be approved if a person's documented disability warrants such an accommodation.

(5) **Notice of attorney advisor.** Anyone who plans to have an attorney present during a conduct proceeding must notify the conduct officer (awilliams@everettcc.edu or 425-388-9282) Title IX coordinator (TitleIXcoordinator@everettcc.edu or 425-388-9271), or chair of the student conduct committee (email address or phone number) of this intent four business days in advance of the scheduled sexual misconduct proceeding.

(6) When scheduling procedural meetings and/or interviews, the college will make reasonable efforts to accommodate an advisor. However, the availability of individuals directly involved in the proceedings, including the personnel assigned to the matter, as well as the expectation to promptly complete the proceedings may, in the campus' constituent discretion, take priority when determining the date and time for the proceedings.

NEW SECTION

WAC 132E-122-290 Brief adjudicative proceeding—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. 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) The parties to a brief adjudicative proceeding are the respondent, the conduct officer, and in cases involving sexual misconduct, the complainant. 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 the respondent and the conduct officer within ten business 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 ten business days of service of the initial decision, the initial decision shall be deemed the final decision.

NEW SECTION

WAC 132E-122-300 Brief adjudicative proceedings—Review of initial decision. (1) An initial decision is subject to review by the vice president of instruction and student services, provided a party files a written request for review with the conduct review officer within ten business days of service of the initial decision.

(2) The vice president of instruction and student services shall not participate in any case in which they are a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the vice president of instruction and student services shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty business days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the vice president of instruction and student services does not make a disposition of the matter within twenty business days after the request is submitted.

(5) If the vice president of instruction and student services 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.

(6) In cases involving allegations of sexual misconduct, the vice president of instruction and student services, on the same date as the final decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complaint of their appeal rights.

NEW SECTION

WAC 132E-122-310 Full adjudicative process—Student conduct committee. (1) The student conduct committee shall consist of three members appointed by the president in consultation with student and faculty leadership:

- (a) A full-time student;
- (b) A full-time faculty member; and
- (c) A full-time exempt administrative staff member who shall serve as chair of the committee.

(2) The student conduct committee will hear appeals of disciplinary action imposing a conduct suspension in excess of ten days or a conduct dismissal.

(3) The committee will hear such other matters as may be referred to the committee by the conduct officer, Title IX coordinator, conduct review officer, or vice president of instruction and student services. The committee shall have the authority to recommend dismissing a proceeding or to recommend imposing any of the disciplinary sanctions under WAC 132E-122-200.

(4) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act (chapter 34.05 RCW) and by the model rules of procedure (chapter 10-08 WAC), as supplemented by these rules.

NEW SECTION

WAC 132E-122-320 Full adjudicative process—Prehearing procedure. (1) The student conduct committee chair shall serve all parties with written notice of the hearing date, time, and location not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 132E-122-270.

The chair may shorten this notice period if the parties agree, and may continue the hearing to a later time for good cause shown.

(2) The student conduct committee chair is authorized to conduct prehearing conferences and to make prehearing decisions concerning the forms and extent of any discovery, issuance of protective orders, and similar procedural matters.

(3) The student conduct committee chair may direct the parties prior to the hearing to submit to the chair a list of witnesses and copies of exhibits that the parties reasonably expect to present to the committee.

(a) The student conduct committee chair shall then provide copies of the submitted list of witnesses and of exhibits to the other party(ies), concurrently.

(b) Failure to participate in good faith in such an exchange may be cause for excluding from the hearing any witness or exhibit not disclosed.

(4) The student conduct committee chair in advance of the hearing may provide committee members with copies of:

- (a) Any notice of disciplinary action or referral to the committee; and
- (b) Any notice of appeal filed by the respondent or any complainant.

However, such "pleadings" shall not be regarded as evidence of any facts they may allege.

(5) Consistent with WAC 132E-122-260, any party may be accompanied at the hearing by an advisor or attorney of the party's choice.

(6) A respondent or any complainant may be represented by an attorney at such party's own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, the attorney files and serves a notice of appearance to the student conduct committee chair (EMAIL, 2000 Tower Street, Everett, WA 98201).

(7) If the respondent or complainant is represented by an attorney, the conduct officer may be represented by the college's assistant attorney general.

(8) The student conduct committee may itself be advised in any proceeding by an independently assigned assistant attorney general who shall have had no other involvement in the matter and who shall be appropriately screened from any other assistant attorney general appearing in the proceeding.

NEW SECTION

WAC 132E-122-330 Full adjudicative process—Hearing procedure. (1) Should a party fail to attend or participate in a hearing, the student conduct committee may either:

- (a) Proceed with the hearing; or
- (b) Serve an order of default in accordance with RCW 34.05.440.

(2) The student conduct committee chair shall cause the hearing to be recorded pursuant to RCW 34.05.449 by a method the chair selects.

(3) The student conduct committee chair shall maintain the official record of the proceeding that is required by RCW 34.05.476.

Such record shall be made available upon request for inspection and copying by any party to the extent permitted by applicable laws.

(4) The student conduct committee chair shall preside at the hearing and shall decide procedural questions that arise during the hearing, except as overridden by a majority vote of the committee.

(5) The student conduct officer shall present the case for imposing disciplinary sanctions and shall bear the burden of establishing the alleged violations by a preponderance of the evidence.

(6) All testimony shall be given under oath or affirmation.

(7) All evidence shall be admitted or excluded in accordance with RCW 34.05.452.

(8) In proceedings involving allegations of sexual misconduct, the respondent and complainant, or their advisor or attorney representatives, shall not directly question or cross-examine one another.

All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on behalf of the parties.

(9) In proceedings involving allegations of sexual misconduct, the respondent and complainant shall not be required to be in the same room at the same time (i.e., through use of closed circuit TV or use of other similar technology).

(10) In proceedings involving allegations of sexual misconduct, college officials shall make arrangements to reasonably assure that respondents and complainants will not be in the same room at the same time when arriving to, departing from, and during any breaks of the student conduct committee proceedings.

NEW SECTION

WAC 132E-122-340 Full adjudicative process—Decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form the committee wishes to receive them.

The committee may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the conclusion of the hearing or the receipt of closing arguments, the student conduct committee shall issue a decision in accordance with RCW 34.05.461 and WAC 132E-122-160 and 132E-122-200.

(a) The decision shall contain findings on:

(i) All material issues of fact, except for cases involving sexual misconduct;

(ii) Conclusions concerning which, if any, provisions of the conduct code were found to be violated; and

(iii) Any sanction(s).

(b) Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The student conduct committee chair shall, within twenty days of the conclusion of the hearing, serve the decision to the respondent, the student conduct officer, and any complainant in a proceeding involving allegations of sexual misconduct, concurrently.

The recommended decision letter shall include notification that the review will be limited to reviewing the specific issues raised by the parties during the full adjudication proceedings.

(4) In a proceeding involving allegations of sexual misconduct, the review decision letter will explain the reasons for modifying any recommended disciplinary action with respect to such allegations.

(5) The decision will state whether the alleged misconduct was substantiated and will describe any sanctions or conditions imposed.

The copy of the decision provided to a complainant will be redacted as needed to exclude any confidential information not relating to sexual misconduct allegations.

NEW SECTION

WAC 132E-122-350 Full adjudicative proceedings—Student conduct committee appeal. (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 vice president of instruction and student services by filing a notice of appeal to the vice president of instruction and student services within ten business days of services 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 vice president may ask for additional briefing from the parties on issues raised on appeal. The vice president of instruction and student services' 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 vice president of instruction and student services shall provide a written decision to the respondent and the student conduct officer within twenty days after receipt of the notice of appeal. The vice president of instruction and student services' decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) In cases involving allegations of sexual misconduct, the vice president of instruction and student services, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

(5) In cases involving allegations of sexual misconduct, the complainant will have the same appeal rights as the respondent.

NEW SECTION

WAC 132E-122-360 Summary suspension—Purpose and proceeding. (1) Summary suspension is exclusion from classes or other privileges, services and activities. A student shall be summarily suspended if the chief student affairs officer or designee has cause to believe that the student:

(a) Has violated any provision of this chapter; and/or

(b) Presents an imminent danger either to themselves, other persons on the campus, or to the educational process.

(2) Summary suspension is appropriate only where subsection (1)(b) of this section can be shown, either alone or in conjunction with subsection (1)(a) of this section. The chief student affairs officer or designee shall enter an order served by certified and regular mail at the student's last known address, or shall be personally served on the student.

(3) The procedures for a summary suspension hearing shall be considered an emergency adjudicative proceeding and shall be conducted as soon as possible and, if feasible, within five business days. It is the student's responsibility to

schedule the hearing. The chief student affairs officer or designee may, upon the request of the student, schedule the hearing at a time later than five business days. The chief student affairs officer or designee shall preside over the meeting. The student may appear alone or with another to advise and assist them as they appear before the appropriate college official(s). Any person who accompanies the student may provide support or guidance to the student, but may not speak, represent, or advocate for the student before the college official. An accommodation of a spokesperson (a person who would address the college official(s)) may be approved if a person's disability warrants such an accommodation. Other circumstances regarding a request by the student for the use of a spokesperson would be considered by the chief student affairs officer or designee. The chief student affairs officer or designee shall, at the summary suspension proceeding, determine whether there is probable cause to believe that continued suspension is necessary and/or whether other disciplinary action is appropriate.

(4) The chief student affairs officer or designee may continue to enforce the suspension of the student from the college and/or may impose other disciplinary action if, after the summary suspension hearing, the chief student affairs officer or designee finds that the student against whom the specific violations are alleged has in fact committed one or more of said violations and:

(a) Summary suspension is necessary for the safety of the student, other campus community members, or to restore order to the campus; and

(b) The violation(s) by the student are grounds for disciplinary action per the provisions of this code.

NEW SECTION

WAC 132E-122-370 Summary suspension—Notice.

(1) If, after the summary suspension hearing a student's summary suspension is upheld or if the student is disciplined in another way, the chief student affairs officer or designee will provide to the student written findings of fact and conclusions which lead the chief student affairs officer or designee to conclude that the summary suspension of the student should be affirmed.

(2) The student shall be served a copy, if applicable, of the findings and conclusions by certified and regular mail to the student's last known address or by personal services within ten business days following the summary suspension hearing. The notice shall state the terms for which the student is suspended and any conditions imposed on the student's return.

NEW SECTION

WAC 132E-122-380 Summary suspension—For failure to appear. The chief student affairs officer or designee has the authority to enforce the suspension of a student if the student fails to appear at the time designated for the summary suspension hearing.

NEW SECTION

WAC 132E-122-390 Summary suspension—Appeal.

(1) A student has the right to appeal a summary suspension to the student conduct committee and may do so if:

(a) The student has been officially notified in writing of the outcome of the summary suspension hearing;

(b) Summary suspension or other disciplinary action has been upheld; and

(c) The student's appeal conforms to the procedures prescribed in this chapter.

(2) The student conduct committee shall conduct a formal hearing as expeditiously as possible and appropriate.

NEW SECTION

WAC 132E-122-400 Readmission after dismissal. (1)

Any student expelled from the college may submit a written petition to the chief student affairs officer or designee requesting readmission. Such petition must include how any conditions imposed by the chief student affairs officer or designee or student conduct committee have been met. Decisions by the chief student affairs officer or designee regarding a petition for readmission shall be reviewed by the president.

(2) If the chief student affairs officer or designee suspends or expels a student from a college program that has a readmission policy and procedure, the program's readmission policy and procedures will be followed and the readmission committee will review, as part of their deliberations, the chief student affairs officer's or designee's recommendation/conditions of readmission concerning the student's readmission to the program.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132E-120-110	Everett Community College student rights and responsibilities.
WAC 132E-120-120	Academic affairs.
WAC 132E-120-130	Students as research subjects.
WAC 132E-120-140	Right to due process.
WAC 132E-120-150	Student affairs.
WAC 132E-120-160	Disclosure of student information.
WAC 132E-120-170	Everett Community College distribution of literature procedures.
WAC 132E-120-180	Everett Community College—Student conduct code—Statement of purpose.
WAC 132E-120-190	Everett Community College—General policies concerning student conduct.
WAC 132E-120-200	Authority to request identification.
WAC 132E-120-210	Everett Community College student conduct—Authority and responsibility.

WAC 132E-120-220	Student conduct code—Violations.
WAC 132E-120-230	Everett Community College—Student conduct code—Sanctions for violations.
WAC 132E-120-240	Student conduct—Initial disciplinary procedures.
WAC 132E-120-250	Summary suspension—Purpose and proceedings.
WAC 132E-120-260	Notice of summary suspension.
WAC 132E-120-270	Summary suspension for failure to appear.
WAC 132E-120-280	Appeals from summary suspension hearing.
WAC 132E-120-290	Student conduct committee.
WAC 132E-120-300	Appeals of disciplinary action—General.
WAC 132E-120-310	Student conduct committee hearing procedures.
WAC 132E-120-320	Evidence admissible in hearings.
WAC 132E-120-330	Decision by student conduct committee.
WAC 132E-120-340	Final appeal.
WAC 132E-120-350	Readmission after dismissal.
WAC 132E-120-360	Academic grievance procedure.
WAC 132E-120-370	Student affairs grievance procedure.
WAC 132E-120-380	Equal opportunity—Title IX.
WAC 132E-120-385	Equal opportunity—Title IX procedures.
WAC 132E-120-390	Hazing policy.

WSR 17-21-037**PROPOSED RULES****ATTORNEY GENERAL'S OFFICE**

[Filed October 12, 2017, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-05-111.

Title of Rule and Other Identifying Information: Motor vehicle warranties arbitration and arbitration process update. The legislature, in enacting the Motor Vehicle Warranties Act (MVWA) chapter 19.118 RCW, required the attorney general to establish an arbitration program to administer the chapter, "The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by an entity or by the attorney general ..." RCW 19.118.080(2) and "The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter ..." RCW 19.118.080(6).

Hearing Location(s): On December 5, 2017, at 10:00 a.m.-noon, at the Office of the Attorney General, 800 5th Avenue, 20th Floor, Chief Sealth Conference Room, Seattle, WA 98104.

Date of Intended Adoption: On or after December 19, 2017.

Submit Written Comments to: Marc Worthy, Assistant Attorney General, Consumer Protection Division, 800 5th Avenue, Mailstop TB-14, Seattle, WA 98104, email Marcw@atg.wa.gov Subject Line: Lemon Law Rules, fax 206-587-5636, 206-464-6388, by November 30, 2017.

Assistance for Persons with Disabilities: Contact Marc Worthy, assistant attorney general, consumer protection division, phone 206-464-6388, fax 206-587-5636, email Marcw@atg.wa.gov Subject Line: Lemon Law Rules, by November 30, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed language complies with legislative direction in RCW 19.118.080(2) that, "The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by an entity or by the attorney general ..." and RCW 19.118.080(6), "The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter ..." The attorney general is seeking to update and streamline WAC 44-10-200(6), 44-10-010(c), 44-10-180(5), 44-10-050(2), 44-10-100(3), 44-10-110, 44-10-200 (1)(d) pursuant to this legislative direction.

Reasons Supporting Proposal: Pursuant to this authority, the proposed revisions will update, streamline, and enhance the efficiency of communications, recordkeeping, and procedures regarding vehicle arbitrations under this act. The revisions will also remove redundant provisions and enhance equity and fairness between the participants.

Statutory Authority for Adoption: RCW 19.118.080 (2), (6).

Statute Being Implemented: Chapter 19.118 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: No adverse fiscal impact to the state is expected from the proposed rules.

Name of Proponent: Bob Ferguson, attorney general of Washington, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Marc Worthy, Seattle, Washington, 206-464-6388.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i) this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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. In addition, pursuant to RCW 34.05.328 (5)(b)(v), these proposed new rules adopt content that is

explicitly and specifically dictated by statute. See description under "Reasons Supporting Proposal" section.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No business as defined by RCW 19.85.020(3) will be affected by these rule changes.

October 12, 2017
Bob Ferguson
Attorney General

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

WAC 44-10-010 Definitions. Terms, when used in this chapter, shall have the same meaning as terms used in chapter 19.118 RCW. The following definitions shall supplement or aid in the interpretation of the definitions set forth in chapter 19.118 RCW.

"Arbitration special master" means the individual or group of individuals selected by the board to hear and decide special issues timely brought before the board.

"Attorney general" or "attorney general's office" means the person duly elected to serve as attorney general of the state of Washington and delegates authorized to act on his or her behalf.

"Board" or "arbitration board" means the new motor vehicle arbitration board established by the attorney general pursuant to RCW 19.118.080.

"Intervening transferor" means any person or entity which receives, buys or otherwise transfers the returned new motor vehicle prior to the first retail transfer, sale or lease subsequent to being repurchased or replaced by the manufacturer.

"Lemon Law administration" means the section within the attorney general's office, consumer protection division, designated by the attorney general to be responsible for the implementation of chapter 19.118 RCW and related rules.

"Lemon Law resale documents" refers to the following:

(a) "Lemon Law resale windshield display" means a document created and provided by the attorney general which identifies that: (i) The vehicle was reacquired by the manufacturer after a determination, settlement or adjudication of a dispute; (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer.

(b) "Lemon Law resale disclosure": Means a document created and provided by the attorney general which identifies that: (i) The vehicle was reacquired by the manufacturer after a settlement, determination or adjudication of a dispute; (ii) the vehicle has one or more nonconformities or serious safety defects, or was out-of-service thirty or more days due to diagnosis or repair of one or more nonconformities; and (iii) the defects or conditions causing the vehicle to be reacquired by the manufacturer. The document will provide space for the manufacturer to indicate if each nonconformity or serious safety defect has been corrected and is warranted by the manufacturer.

~~((e)) "Notice of out-of-state disposition of a reacquired vehicle" refers to a document created and provided by the Lemon Law administration which requires the manufacturer, agent or dealer to identify the destination state and the dealer, auction, other person or entity to whom the manufacturer sells or otherwise transfers the reacquired vehicle when the vehicle is taken to another state for any disposition, including: Resale, transfer or destruction.))~~

"Manufacturer dispute program" means a program offered by a manufacturer to owners or lessees of vehicles covered by or previously covered by the manufacturer's warranty to resolve complaints or claims: (a) Established in substantial compliance with the applicable provision of Title 16, Code of Federal Regulations Part 703; (b) where the basis of the program's standards for decision making are substantially equivalent to chapter 19.118 RCW; (c) where the basis of the program's standards for decision making are identified as some or all of the provisions of chapter 19.118 RCW; or (d) references the "Lemon Law" in a manner suggesting or inferring that chapter 19.118 RCW is the program's basis for the decision making, determining remedies or has been approved by the attorney general.

"Person" includes every natural person, firm, partnership, corporation, association, or organization.

"Settlement" means an agreement between a consumer and a manufacturer to resolve a claim under chapter 19.118 RCW after a request for arbitration has been assigned to the arbitration board and where the agreement results in the manufacturer reacquiring a new motor vehicle directly or indirectly, through an agent or a motor vehicle dealer.

"Similar law of another state" refers to the law of another state which creates remedies for a manufacturer's failure to conform a vehicle to its warranty and under which the vehicle was reacquired by the manufacturer.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

WAC 44-10-050 Assignment to board. (1) Review by the attorney general, a request for arbitration appearing to be timely, complete and to have met the jurisdictional requirements of chapter 19.118 RCW will be assigned to the board.

(2) A notice that the request has been assigned to the board to be scheduled for an arbitration hearing will be sent to the consumer and manufacturer by email, standard U.S. mail or certified mail ~~((or email if requested by a party))~~. The designated manufacturer contact will be sent a copy of the consumer's request for arbitration and a manufacturer's statement form with the notice of assignment.

(3) Upon receipt of a request for arbitration from the attorney general, the board will record the date it receives the assignment in the request for arbitration record and immediately notify the Lemon Law administration.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

WAC 44-10-100 Subpoenas. (1) A party's request for a subpoena to be issued must be received by the Lemon Law administration with the consumer's request for arbitration or the manufacturer's statement to be considered. A consumer

may submit a request for a subpoena within three business days of receipt of a manufacturer's statement. The attorney general shall make a determination of whether the documents and records sought by the party are reasonably related to the dispute.

(2) A subpoena issued by the attorney general shall identify the party causing the issuance of the subpoena, designate that the subpoena is issued by the attorney general pursuant to RCW 19.118.080, state the purpose of the proceeding, and command the person to whom it is directed to produce at the time and place set in the subpoena the designated documents or records under his or her control.

(3) Service of the subpoena may be made ~~((be))~~ by email or certified mail~~((return receipt requested, email if requested by a party or by overnight express delivery))~~.

(4) A person to whom a subpoena is directed may submit a written request to suspend or limit the terms of the subpoena to the Lemon Law administration within five business days of receipt of the subpoena and shall notify the party who requested the subpoena, of the request to suspend or limit it. The request must be accompanied by a short statement setting forth the basis for the request. The Lemon Law administration program manager may suspend or modify the subpoena or shall assign the request to be heard at the arbitration hearing.

(5) Where the Lemon Law administration program manager upholds or modifies the subpoena, the responding person or party shall comply with the date set in the subpoena or within five business days, whichever is greater.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

WAC 44-10-110 Scheduling of arbitration hearings.

The board has the authority to schedule the arbitration hearing at its discretion. The Lemon Law administration shall notify the parties of the date, time and place by ~~((certified letter mailed))~~ letter sent by standard U.S. mail and email at least ten calendar days prior to the hearing. Hearings may be scheduled during business hours, Monday through Thursday evenings, or Saturdays. If for any reason an arbitration hearing must be rescheduled, the board or the Lemon Law administration shall promptly notify the parties by mail, email if requested by a party or telephone.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

WAC 44-10-180 The arbitration hearing.

(1) The conduct of the hearing shall encourage a full and complete disclosure of the facts.

(2) Arbitrators may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent people in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(3) The consumer shall present his or her evidence and witnesses, then the manufacturer shall present its evidence and witnesses.

(4) Each party may question the other after each presentation, and may question each witness after testimony. The arbitrator may question any party or witness at any time.

(5) The arbitrator shall ensure that ~~((a tape))~~ an electronic recording record of the hearing is maintained.

(6) The arbitrator shall administer an oath or affirmation to each individual who testifies.

(7) The hearing procedure contemplates that both parties will be present. However, either party may offer written testimony only if the board and other parties are in receipt of that evidence prior to the day of the hearing.

(8) A party may request presentation of its case by telephone.

AMENDATORY SECTION (Amending WSR 10-01-069, filed 12/11/09, effective 1/11/10)

WAC 44-10-200 The arbitration decision. (1) The arbitration board shall issue the decision in each case to the Lemon Law administration within sixty calendar days of receipt of the request for arbitration:

(a) All decisions shall be written, in a form to be provided by the Lemon Law administration, dated and signed by the arbitrator, and sent by certified mail to the parties;

(b) The date on which the board provides the arbitration decision to the Lemon Law administration shall determine compliance with the sixty day requirement to issue an arbitration decision;

(c) The written decision shall contain findings of fact and conclusions of law as to whether the motor vehicle meets the statutory standards for refund or replacement;

(i) If the consumer prevails and has elected repurchase of the vehicle, the decision shall include the statutory calculations used to determine the monetary award;

(ii) If the consumer prevails and has elected replacement of the vehicle, the decision shall identify or describe a reasonably equivalent replacement vehicle and any refundable incidental costs;

(iii) If the consumer prevails and the manufacturer and the consumer have been represented by counsel, the decision shall include a description of the awarded reasonable costs and attorneys' fees incurred by the consumer in connection with board proceedings.

Reasonable costs and attorneys' fees shall be determined by the arbitrator based on an affidavit of costs and fees prepared by the consumer's attorney and submitted no later than the conclusion of the arbitration hearing. The affidavit may be amended for post-hearing costs and fees. The amended affidavit of costs and fees must be delivered to the manufacturer's designated representative by certified mail or personal service and a copy submitted to the Lemon Law administration by the consumer's attorney within thirty days of the consumer's acceptance of the decision but in no case after a manufacturer's compliance with a decision;

(d) Upon receipt of the board's decision, the Lemon Law administration will distribute it to the parties by ~~((certified mail or email if requested by a party))~~ email or standard U.S. mail.

(2) Upon request of a party, an arbitrator shall make factual findings and modify the offset total where the wear and

tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space is significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home in an arbitration decision awarding repurchase or replacement of a new motor vehicle. An arbitrator will consider the actual amount of time that portions of the motor home were in use as dwelling, office or commercial space. The arbitrator shall not consider wear and tear resulting from:

(a) Defects in materials or workmanship in the manufacture of the motor home including the dwelling, office or commercial space;

(b) Damage due to removal of equipment pursuant to RCW 19.118.095 (1)(a); or

(c) Repairs.

The modification to the reasonable offset for use may not result in the addition or reduction of the offset for use calculation by more than one-third. The modification shall be specified as a percentage for reduction or addition to the offset calculation. The modification to the reasonable offset for use shall apply to the offset calculation at the time of repurchase or replacement of the motor home.

(3)(a) A motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home if the manufacturer:

(i) Has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a) or (b); or

(ii) Is responsible for sixty or more applicable days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is independently liable for compliance with a decision awarding repurchase or replacement of the motor home.

(b) If a motor home manufacturer has not met the criteria set forth in (a)(i) and (ii) of this subsection, but has contributed to the combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the manufacturer is jointly liable with the other liable motor home manufacturers for compliance with a decision awarding repurchase or replacement of the motor home.

(c) If a motor home manufacturer has met or exceeded the reasonable number of attempts to diagnose or repair the vehicle as set forth in RCW 19.118.041 (3)(a), (b), or (c) and the manufacturer, together with one or more other motor home manufacturers, contributed to a combined total of sixty or more days out of service by reason of diagnosis or repair as set forth in RCW 19.118.041 (3)(c), the motor home manufacturer is jointly and severally liable for compliance with a decision awarding repurchase or replacement of the motor home.

(d) In a decision awarding repurchase or replacement of a motor home, and that allocates compliance liability, an arbitrator will identify the motor home manufacturer's minimum percentage of contribution to compliance with the award. In determining the allocation of liability among jointly liable motor home manufacturers, the arbitrator will consider a motor home manufacturer's contribution to the total number of applicable days out of service as a factor.

(e) When applicable as set forth in RCW 19.118.090(6), the arbitrator must allocate liability for the consumer's costs and attorneys' fees among the liable motor home manufacturers represented by counsel. The arbitrator will specify the liable motor home manufacturer's minimum percentage of contribution to compliance with the award. The motor home manufacturer's minimum percentage of contribution for the consumer's costs and attorneys' fees may be different from the minimum percentage of contribution of the motor home manufacturer's compliance obligation due to other liable motor home manufacturers' lack of representation by counsel.

(f) An arbitration decision must specify that the lack of compliance, late or delayed compliance, or the filing of an appeal by another liable motor home manufacturer will not affect a motor home manufacturer's independent liability for compliance with a decision awarding repurchase or replacement of the motor home.

(g) A motor home manufacturer may present testimony and other evidence regarding the allocation of liability for compliance with arbitration decisions awarding repurchase or replacement of the motor home. If the motor home manufacturers agree amongst themselves to terms for the allocation of liability for compliance obligations, the arbitrator must include the terms in the arbitration decisions awarding repurchase or replacement of the motor home if the terms are consistent with the arbitration decisions, specific, complete and not otherwise contrary to chapter 19.118 RCW.

(4) Included with the copy of the arbitration decision sent to the consumer shall be a form to be completed by the consumer, indicating acceptance or rejection of the decision and general information to the consumer explaining the consumer's right to appeal the decision to superior court. The consumer must return the form to the Lemon Law administration within sixty calendar days from the date of the consumer's receipt of the decision or the decision will be deemed to have been rejected as of the sixty-first day.

(5) The consumer shall have one hundred twenty calendar days from the date of the rejection of the decision to file a petition of appeal in superior court. At the time of filing an appeal, the consumer shall deliver by certified mail or by personal service a conformed copy of the petition to the attorney general.

(6) If the consumer accepts a decision which awards repurchase or replacement, the Lemon Law administration shall send a copy of the form completed by the consumer indicating acceptance to the manufacturer by certified mail or email ~~((if requested by the manufacturer and shall include a manufacturer's intent form.~~

~~A verification of compliance form shall be sent to the consumer by the Lemon Law administration. The verification of compliance form shall be completed and returned to the Lemon Law administration by the consumer upon the manufacturer's compliance with the decision).~~

WSR 17-21-039
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed October 12, 2017, 1:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-19-032.

Title of Rule and Other Identifying Information: WAC 182-543-1000 DME and related supplies, complex rehabilitation technology, prosthetics and orthotics, medical supplies and related services—Definitions and 182-543-2000 DME, CRT, P & O, medical supplies—Eligible providers and provider requirements.

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal 106A Conference Room, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than November 22, 2017.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by November 21, 2017.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email amber.lougheed@hca.wa.gov, by November 17, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-543-1000 to align with 42 C.F.R. Part 440.70, which modified the description of medical supplies and equipment. In WAC 182-543-2000, the agency is also: (1) Clarifying that the requirement for a valid prescription applies to DME and related supplies, complex rehabilitation technology, prosthetics, orthotics, medical supplies and related services in subsection (2)(c); (2) fixing an incorrect hyperlink in subsection (2)(c)(A); and (3) adding complex rehabilitation technology to the list in subsection (2)(g).

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is necessary because of federal law, 42 C.F.R. Sec. 440.70.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1729.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule **does not impose** compliance costs (or does not impose more-than-minor costs) on businesses.

October 12, 2017

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-035, filed 3/25/14, effective 4/25/14)

WAC 182-543-1000 DME and related supplies, complex rehabilitation technology, prosthetics, and orthotics, medical supplies and related services—Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter.

"By-report (BR)" - See WAC 182-500-0015.

"Complex needs patient" - An individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities.

"Complex rehabilitation technology (CRT)" - Wheelchairs and seating systems classified as durable medical equipment within the medicare program that:

(1) Are individually configured for individuals to meet their specific and unique medical, physical, and functional needs and capacities for basic activities as medically necessary to prevent hospitalization or institutionalization of a complex needs patient;

(2) Are primarily used to serve a medical purpose and generally not useful to a person in the absence of an illness or injury; and

(3) Require certain services necessary to allow for appropriate design, configuration, and use of such item, including patient evaluation and equipment fitting.

"Date of delivery" - The date the client actually took physical possession of an item or equipment.

"Digitized speech" (also referred to as devices with whole message speech output) - Words or phrases that have been recorded by an individual other than the speech generating device (SGD) user for playback upon command of the SGD user.

"Disposable supplies" - Supplies which may be used once, or more than once, but are time limited.

"Durable medical equipment (DME)" - Equipment and appliances that:

(1) ~~(Can withstand repeated use;~~

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

~~((2))~~ (2) Generally ~~((is))~~ are not useful to a person in the absence of a disability, illness, or injury; ~~((and~~

~~(4) Is appropriate))~~

(3) Can withstand repeated use;

(4) Can be reusable or removable; and

(5) Are suitable for use in ((the client's place of residence)) any setting in which normal life activities take place.

"EPSDT" - See WAC 182-500-0030.

"Expedited prior authorization (EPA)" - See WAC 182-500-0030.

"Fee-for-service (FFS)" - See WAC 182-500-0035.

"Health care common procedure coding system (HCPCS)" - A coding system established by the Health Care Financing Administration (HCFA) to define services and procedures. HCFA is now known as the Centers for Medicare and Medicaid Services (CMS).

"Home" - For the purposes of this chapter, means location, other than hospital or skilled nursing facility where the client receives care.

"House wheelchair" - A skilled nursing facility wheelchair that is included in the skilled nursing facility's per-patient-day rate under chapter 74.46 RCW.

"Individually configured" - A device has a combination of features, adjustments, or modifications specific to a complex needs patient that a qualified complex rehabilitation technology supplier provides by measuring, fitting, programming, adjusting, or adapting the device as appropriate so that the device is consistent with an assessment or evaluation of the complex needs patient by a health care professional and consistent with the complex needs patient's medical condition, physical and functional needs and capacities, body size, period of need, and intended use.

"Limitation extension" - A client-specific authorization by the agency for additional covered services beyond the set amount allowed under agency rules. See WAC 182-501-0169.

"Manual wheelchair" - See "Wheelchair - Manual."

"Medical supplies" - ((Supplies that are)) Health care-related items that:

(1) ~~((Primarily and customarily used to service a medical purpose; and~~

~~(2) Generally not useful to a person in the absence of illness or injury.)) Are consumable or disposable or cannot withstand repeated use by more than one person;~~

~~(2) Required to address an individual disability, illness, or injury; and~~

~~(3) Are suitable for use in any setting in which normal life activities take place.~~

"Medically necessary" - See WAC 182-500-0070.

"National provider indicator (NPI)" - See WAC 182-500-0075.

"Other durable medical equipment (other DME)" - All durable medical equipment, excluding wheelchairs and wheelchair-related items.

"Orthotic device" or "orthotic" - A corrective or supportive device that:

(1) Prevents or corrects physical deformity or malfunction; or

(2) Supports a weak or deformed portion of the body.

"Personal or comfort item" - An item or service which primarily serves the comfort or convenience of the client or caregiver.

"Power-drive wheelchair" - See "Wheelchair - Power."

"Pricing cluster" - A group of manufacturers' list prices for brands/models of DME, medical supplies and nondurable medical equipment that the agency considers when calculating the reimbursement rate for a procedure code that does not have a fee established by medicare.

"Prior authorization" - See WAC 182-500-0085.

"Prosthetic device" or "prosthetic" - See WAC 182-500-0085.

"Qualified complex rehabilitation technology supplier" - A company or entity that:

(1) Is accredited by a recognized accrediting organization as a supplier of CRT;

(2) Meets the supplier and quality standards established for durable medical equipment suppliers under the medicare program;

(3) For each site that it operates, employs at least one CRT professional, certified by the rehabilitation engineering and assistive technology society of North America as an assistive technology professional, to analyze the needs and capacities of clients, and provide training in the use of the selected covered CRT items;

(4) Has the CRT professional physically present for the evaluation and determination of the appropriate individually configured CRT for the complex needs patient;

(5) Provides service and repairs by qualified technicians for all CRT products it sells; and

(6) Provides written information to the complex needs patient at the time of delivery about how the individual may receive service and repair of the delivered CRT.

"Resource-based relative value scale (RBRVS)" - A scale that measures the relative value of a medical service or intervention, based on the amount of physician resources involved.

"Reusable supplies" - Supplies which are to be used more than once.

"Scooter" - A federally approved, motor-powered vehicle that:

(1) Has a seat on a long platform;

(2) Moves on either three or four wheels;

(3) Is controlled by a steering handle; and

(4) Can be independently driven by a client.

"Specialty bed" - A pressure reducing support surface, such as foam, air, water, or gel mattress or overlay.

"Speech generating device (SGD)" - An electronic device or system that compensates for the loss or impairment of a speech function due to a congenital condition, an acquired disability, or a progressive neurological disease. The term includes only that equipment used for the purpose of communication. Formerly known as "augmentative communication device (ACD)."

"Synthesized speech" - Is a technology that translates a user's input into device-generated speech using algorithms representing linguistic rules, unlike prerecorded messages of digitized speech. A SGD that has synthesized speech is not limited to prerecorded messages but rather can independently create messages as communication needs dictate.

"Three- or four-wheeled scooter" - A three- or four-wheeled vehicle meeting the definition of scooter (see "scooter") and which has the following minimum features:

(1) Rear drive;

(2) A twenty-four volt system;

(3) Electronic or dynamic braking;

(4) A high to low speed setting; and

(5) Tires designed for indoor/outdoor use.

"Trendelenburg position" - A position in which the patient is lying on his or her back on a plane inclined thirty to

forty degrees. This position makes the pelvis higher than the head, with the knees flexed and the legs and feet hanging down over the edge of the plane.

"Usual and customary charge" - See WAC 182-500-0110.

"Warranty-period" - A guarantee or assurance, according to manufacturers' or provider's guidelines, of set duration from the date of purchase.

"Wheelchair - Manual" - A federally approved, non-motorized wheelchair that is capable of being independently propelled and fits one of the following categories:

- (1) Standard:
 - (a) Usually is not capable of being modified;
 - (b) Accommodates a person weighing up to two hundred fifty pounds; and
 - (c) Has a warranty period of at least one year.
- (2) Lightweight:
 - (a) Composed of lightweight materials;
 - (b) Capable of being modified;
 - (c) Accommodates a person weighing up to two hundred fifty pounds; and
 - (d) Usually has a warranty period of at least three years.
- (3) High-strength lightweight:
 - (a) Is usually made of a composite material;
 - (b) Is capable of being modified;
 - (c) Accommodates a person weighing up to two hundred fifty pounds;
 - (d) Has an extended warranty period of over three years; and
 - (e) Accommodates the very active person.
- (4) Hemi:
 - (a) Has a seat-to-floor height lower than eighteen inches to enable an adult to propel the wheelchair with one or both feet; and
 - (b) Is identified by its manufacturer as "Hemi" type with specific model numbers that include the "Hemi" description.
- (5) Pediatric: Has a narrower seat and shorter depth more suited to pediatric patients, usually adaptable to modifications for a growing child.
- (6) Recliner: Has an adjustable, reclining back to facilitate weight shifts and provide support to the upper body and head.
- (7) Tilt-in-space: Has a positioning system, which allows both the seat and back to tilt to a specified angle to reduce shear or allow for unassisted pressure releases.
- (8) Heavy duty:
 - (a) Specifically manufactured to support a person weighing up to three hundred pounds; or
 - (b) Accommodating a seat width of up to twenty-two inches wide (not to be confused with custom manufactured wheelchairs).
- (9) Rigid: Is of ultra-lightweight material with a rigid (nonfolding) frame.
- (10) Custom heavy duty:
 - (a) Specifically manufactured to support a person weighing over three hundred pounds; or
 - (b) Accommodates a seat width of over twenty-two inches wide (not to be confused with custom manufactured wheelchairs).

(11) Custom manufactured specially built:

(a) Ordered for a specific client from custom measurements; and

(b) Is assembled primarily at the manufacturer's factory.

"Wheelchair - Power" - A federally approved, motorized wheelchair that can be independently driven by a client and fits one of the following categories:

(1) Custom power adaptable to:

(a) Alternative driving controls; and

(b) Power recline and tilt-in-space systems.

(2) Noncustom power: Does not need special positioning or controls and has a standard frame.

(3) Pediatric: Has a narrower seat and shorter depth that is more suited to pediatric patients. Pediatric wheelchairs are usually adaptable to modifications for a growing child.

AMENDATORY SECTION (Amending WSR 17-15-073, filed 7/14/17, effective 8/14/17)

WAC 182-543-2000 DME and related supplies, complex rehabilitation technology, prosthetics, orthotics, medical supplies and related services—Eligible providers and provider requirements. (1) The medicaid agency pays qualified providers for durable medical equipment (DME) and related supplies, complex rehabilitation technology (CRT), prosthetics, orthotics, medical supplies, repairs, and related services on a fee-for-service basis as follows:

(a) DME providers who are enrolled with medicare for DME and related repair services;

(b) Qualified CRT suppliers who are enrolled with medicare for DME and related repair services;

(c) Medical equipment dealers who are enrolled with medicare, pharmacies who are enrolled with medicare, and home health agencies under their national provider identifier (NPI) for medical supplies;

(d) Prosthetics and orthotics providers who are licensed by the Washington state department of health in prosthetics and orthotics. Medical equipment dealers and pharmacies that do not require state licensure to provide selected prosthetics and orthotics may be paid for those selected prosthetics and orthotics only as long as the medical equipment dealers and pharmacies meet the medicare enrollment requirement;

(e) Occupational therapists providing orthotics who are licensed by the Washington state department of health in occupational therapy;

(f) Physicians who provide medical equipment and supplies in the office. The agency may pay separately for medical supplies, subject to the provisions in the agency's resource-based relative value scale fee schedule; and

(g) Out-of-state prosthetics and orthotics providers who meet their state regulations.

(2) Providers and suppliers of DME and related supplies, CRT, prosthetics, orthotics, medical supplies and related items must:

(a) Meet the general provider requirements in chapter 182-502 WAC;

(b) Have the proper business license and be certified, licensed and bonded if required, to perform the services billed to the agency;

(c) Have a valid prescription ((for the DME)).

(i) To be valid, a prescription must:

(A) Be written on the agency's Prescription Form (HCA 13-794). The agency's electronic forms are available online at (~~http://www.hca.wa.gov/medicaid/forms/Pages/index.aspx~~) www.hca.wa.gov/billers-providers/forms-and-publications;

(B) Be written by a physician, advanced registered nurse practitioner (ARNP), naturopathic physician, or physician's assistant certified (PAC);

(C) Be written, signed (including the prescriber's credentials), and dated by the prescriber on the same day and before delivery of the supply, equipment, or device. Prescriptions must not be back-dated;

(D) Be no older than one year from the date the prescriber signs the prescription; and

(E) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(ii) For dual-eligible clients when medicare is the primary payer and the agency is being billed for only the copay, only the deductible, or both, subsection (2)(a) of this section does not apply.

(d) Provide instructions for use of equipment;

(e) Provide only new equipment to clients, which include full manufacturer and dealer warranties. See WAC 182-543-2250(3);

(f) Provide documentation of proof of delivery, upon agency request (see WAC 182-543-2200); and

(g) Bill the agency using only the allowed procedure codes listed in the agency's published DME and related supplies, complex rehabilitation technology (CRT) prosthetics and orthotics, medical supplies and related items billing instructions.

WSR 17-21-041

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed October 12, 2017, 3:19 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-124.

Title of Rule and Other Identifying Information: WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs, this rule describes the process of how to request access to public records and the associated costs.

Hearing Location(s): On November 29, 2017, at 10:00 a.m., at Conference Room 114A, 6400 Linderson Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: December 6, 2017.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5717 or 360-725-7514, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments to WAC 458-276-030 are necessary to reflect new legislation, EHB 1595, which passed in 2017. This legislation addresses the costs imposed for public records requests. Updating WAC 458-276-030 will also provide clarity on the fee schedule and the procedures used by the department when providing access to public records.

Reasons Supporting Proposal: The proposed amendments to WAC 458-276-030 are necessary to provide clarity on the fee schedule and the procedures used by the department when providing access to public records.

Statutory Authority for Adoption: Chapter 42.56 RCW, Public Records Act and RCW 82.01.060(2), department of revenue's rule-making authority.

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Marcus Glasper, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed fee schedule in this rule only reflects the fee schedule authorized by RCW 42.56.120. The proposed rule language does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees or procedural guidelines that are not already established in chapter 42.56 RCW for the administration of public records requests.

October 12, 2017

Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-105, filed 12/18/14, effective 1/18/15)

WAC 458-276-030 Availability of public records—Centralized administration—Public records requests and processing—Contact information and hours—Index—Costs. (1) **Availability.** All public records of the department of revenue (department) are deemed to be available for public inspection and copying pursuant to these rules in this chapter, except as otherwise provided by WAC 458-276-045 regarding exemptions and other limitations on disclosure of records.

(2) **Centralized administration.** All communications with the department regarding administration or enforcement of chapter 42.56 RCW and these rules in this chapter, and written requests for copies of the department's public records, decisions, and other matters, are handled by the ((centralized

administration of the public records officer or designee, sometimes collectively referred to as the department's public records unit. This rule describes this centralized administration. The public records officer or designee may be contacted at their centralized location described in subsection (6) of this rule)) information governance office.

(3) **Written and dated requests.** Requestors are encouraged to view the documents available on the web site prior to submitting a records request. The department recommends a written and dated request for public records to protect against unauthorized disclosure of confidential taxpayer information, unauthorized disclosure of licensing information, unauthorized disclosure of confidential property tax information, invasion of privacy, and to enhance the accuracy of the department's response to the request. A written request minimizes confusion or misunderstanding as to what is being requested and establishes a contact for clarifications and questions.

(4) **Request for records.** The written request is most effective if it contains the following information:

(a) Name of the person requesting the records or a point of contact;

(b) Calendar date on which the request is made;

(c) Specific records requested, if not identified in the public records index located online at dor.wa.gov, then an appropriate description of the records requested; and

(d) Contact information for questions about the request including, if possible, mailing address, email address, and telephone number.

(5) **Web site public records email request available.** The department has developed an "email request form" to assist requestors in obtaining public records. This email request form is located on the department's web site at www.dor.wa.gov (searching: "public records").

(6) **Department's contact information.** Any person requesting access to public records of the department or seeking assistance in making such a request should contact the ((public records officer or designee of the department)) information governance office. Written requests for identifiable public records may be submitted to the ((department's public records officer or designee)) information governance office by mail, email message, ((secure message)) through the department's web site, facsimile transmission, or delivered in person to the following addresses and physical location:

((Mail delivery:
Department of Revenue
Public Records Unit
P.O. Box 47478
Olympia, WA 98504-7478;

Email message: dorpublicrecords@dor.wa.gov;
Internet web site: dor.wa.gov (search: "public records");
Facsimile transmission (fax): 360-705-6655;

Street address:
6500 Linderson Way S.W., Suite 102
Tumwater, WA 98501-6561.))

In-person delivery to physical address:
Department of Revenue
Information Governance Office

6400 Linderson Way S.W., Suite 288
Tumwater, WA 98501-6516

Mail delivery:
Department of Revenue
Information Governance Office
P.O. Box 47456
Olympia, WA 98504-7478

Email message: dorpublicrecords@dor.wa.gov
Department's web site: dor.wa.gov
Facsimile transmission (fax): 360-705-6655

(7) **Response.** Within five business days of the receipt of the initial public records request by the ((public records officer or designee)) information governance office, the department will:

- Provide the record;
- Acknowledge that the department has received the request and provide a reasonable estimate of the time it will take to fully respond;
- Seek a clarification of the request; or
- Deny the request.

(8) **Electronic format.** When a person requests public records in an electronic format, the ((public records officer or designee)) information governance office will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the department and is generally commercially available, or in a format that is reasonably translatable from the format in which the department keeps the records.

(9) **Public records index.** The department ((of revenue (department))) maintains and makes available for public inspection and copying an appropriate index or indices in accordance with RCW 42.56.070. Such index or indices are located on the department's web site (searching: "public records index").

(10) **Hours for inspection and copying.** Public records maintained by the department ((in the central administrative offices of the taxpayer services division at the address and location described in subsection (6) of this rule;)) will be available for inspection and copying at the ((central administrative)) information governance office during the ((customary)) office hours of ((the department. For the purposes of these rules in this chapter, the customary office hours are)) 9:00 a.m. to noon and 1:30 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(11) ((**Copying.** There is no fee for the inspection of public records. The department may charge fifteen cents per page for standard black and white paper photocopying. For other than standard photocopies a reasonable fee for providing copies of public records and for use of the department's copy equipment may be charged. The department will publish copying fees to make them readily available to the public. Any fee will be limited to reimbursing the department for its costs incident to such copying. The present fees for copying can be found on the department's internet web site: dor.wa.gov (search: "public records").)) **Fees.**

(a) There is no fee for the inspection of public records.

(b) The department will take reasonable steps to provide records in the most efficient manner available in its normal operations. However, the department will generally charge

fees for providing copies, whether hardcopy or electronic, to public records requests and may combine the following fees to the extent that more than one type of fee applies to copies produced in response to a particular request:

(i) Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person requesting records, or for the use of agency equipment to photocopy public records using standard black and white paper photocopying. For other than standard photocopies, a reasonable fee for providing copies of public records and for use of the department's copy equipment may be charged;

(ii) Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

(iii) Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery;

(iv) Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically; and

(v) The actual cost of any digital storage media or device provided by the department, the actual cost of any container or envelope used to mail the copies to the requestor, and the actual postage or delivery charge.

(c) The department must provide, if asked by the requestor, a summary of the applicable charges before any copies are made. Based on the summary of applicable charges, the requestor may revise the request to reduce the number of copies to be made, thus reducing the charges.

(12) **Fee exception.** The department may not impose the copying fee under subsection (11) of this rule for access to or downloading of records the department routinely posts on dor.wa.gov prior to receipt of a request unless the requestor has specifically requested that the department provide copies of the records through other means.

(13) **Customized service charge.** In addition to the fees imposed under subsection (11) of this rule, the department may also impose a customized service charge. The amount of the customized service charge may:

(a) Be imposed if the department estimates the request will require the use of information technology expertise to prepare data compilations, or to provide customized electronic access services when the department does not use the compilations or customized electronic access services for other department purposes;

(b) Reimburse the department up to the actual cost of providing the services in subsection (13) of this rule; and

(c) Be imposed on the requestor only if the department notified the requestor of the charge. Additionally, the department must provide the requestor:

(i) An explanation of why the charge applies;

(ii) A description of the specific information technology expertise required to fulfill the request;

(iii) A reasonable estimate of the charge; and

(iv) The opportunity to alter the request in order to avoid or reduce the amount of the charge.

(14) **Deposit.** In addition to the fees and charges in subsections (11) and (13) of this rule, the department may also require a deposit not to exceed ten percent of the estimated

cost of providing copies for a request. If the department makes a request available on a partial or installment basis, the agency may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the department is not obligated to fulfill the balance of the request.

(15) **Waiver or alteration of fees.** The department may waive any fee assessed for a public records request pursuant to department rules and regulations. The department may enter into any contract, memorandum of understanding, or other agreement with a requestor that provides an alternative fee arrangement to the charges authorized in this rule, or in response to a voluminous or frequently occurring request.

WSR 17-21-057

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed October 16, 2017, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-152.

Title of Rule and Other Identifying Information: Chapter 98-12 WAC, Endowment care cemeteries, is being amended to add sections regarding "total return distribution method."

Hearing Location(s): On November 21, 2017, at 11:00 a.m., at the Department of Licensing, 405 Black Lake Boulevard, Conference Room 2108, Olympia, WA 98502.

Date of Intended Adoption: November 22, 2017.

Submit Written Comments to: Julie Konnersman, Management Analyst, Funeral and Cemeteries Program, P.O. Box 9012, Olympia, WA 98507-9012, email funerals@dol.wa.gov, fax 360-570-7098, by November 20, 2017.

Assistance for Persons with Disabilities: Contact Jenni Lingle, administrative assistant, phone 360-664-1564, fax 360-570-7098, TTY 711, email funerals@dol.wa.gov, by November 17, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Cemeteries would have the option of using the "total return distribution method" of investing to maintain healthy endowment care fund accounts with the ability to increase their fund principal over time.

Reasons Supporting Proposal: The endowment care funds maintain the normal operations of the cemeteries throughout the state and the ability to increase the fund principal would benefit the overall functionality of these cemeteries.

Statutory Authority for Adoption: RCW 68.05.105.

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

Name of Proponent: Funeral and cemetery board, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela Griese, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1553; Implementation and Enforcement: Rick Storvick, 2000 4th Avenue N.W., Olympia, WA 98502, 360-664-1387.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Department of licensing is exempt under RCW 24.05.328 [34.05.328] (5)(a).

The proposed rule does not impose more-than-minor costs on businesses. The new endowment funding method is optional for the licensee and there are no associated costs or fees.

October 16, 2017
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 83-02-063, filed 1/5/83)

WAC 98-12-030 (~~"Gross sales price" defined.~~)

Definitions. For the purposes of this chapter, the following terms will be construed as follows:

(1) "Average fair market value" means the average of the fair market values of assets held by the endowment care fund on the first day of the current fiscal year and the first day of each of the two preceding fiscal years, or the average of the fair market value for the entire term of the fund if there are less than two preceding years.

(2) "Board" means the funeral and cemetery board.

(3) "Cemetery authority" means an entity that has obtained a certificate of authority to operate a cemetery from the funeral and cemetery board.

(4) "Endowment care cemetery" means a cemetery required to establish an endowment care fund in accordance with chapter 68.40 RCW.

(5) "Extraordinary distributions" means distributions from the endowment care fund pursuant to written consent of the board.

(6) "Fair market value" means the fair market value of the assets held by the fund, reduced by all known noncontingent liabilities.

(a) The fair market value of real estate will be established by the county assessor's valuation on the first day of the current fiscal year.

(b) The fair market value of fractional ownership interests in real estate will be determined by generally accepted valuation methods.

(c) The fair market value of the endowment care fund assets that are not publicly traded on a stock or other regulated securities exchange shall be determined by written valuation certified by a qualified independent public appraiser or qualified independent certified public accountant not affiliated with the cemetery authority or its principals within twelve months of the first day of the fiscal year. If the valuation is not provided, the asset(s) will be assigned a zero value for the purpose of determining fair market value.

(7) "Fiduciary responsibility" means the trustee(s) will manage the endowment care fund in accordance with RCW 11.100.020.

(8) "Gross sales price," in determining "ten percent of the gross sales price" pursuant to RCW 68.40.010, gross sales price shall not include the endowment care fund portion. Endowment care shall be added to the gross sales price and

separately identified as endowment care on any contract. For example: Grave gross sales price - \$100.00. Endowment care requirement - \$10.00. Total contract price - \$110.00.

(9) "Income" means:

(a) Ordinary income, that is, interest, dividends, rents and other amounts received by the fund as current returns on investments, but excludes realized or unrealized capital gains or losses; or

(b) The amount available for distribution using the total return distribution method.

(10) "Net ordinary income" means the ordinary income of the fund reduced by the expenses of operating the fund.

(11) "Total return distribution" means the distributions of the endowment care fund based on the average fair market value of the endowment care fund assets, determined under WAC 98-12-052 multiplied by the total return percentage.

(12) "Total return distribution method" means an alternative distribution method intended to encourage the utilization of endowment care fund investments that will ultimately result in higher endowment care fund income levels through growth in the endowment care fund principal over time.

(13) "Total return percentage" means the annual percentage selected by the endowment care trustee or cemetery authority in accordance with WAC 98-12-051. The total return percentage shall not be less than three percent and not exceed five percent of the average fair market value of the endowment care fund.

(14) "Trustee(s)" means the bank, trust company or persons appointed by the cemetery authority or association of lot owners to hold fiduciary responsibility in managing the endowment care fund in accordance with chapter 68.44 RCW and subject to the direction of the cemetery authority.

NEW SECTION

WAC 98-12-051 Application for total return distribution. (1) An application for implementation of the total return distribution method shall be submitted at least sixty days prior to the effective date of the election to use total return. The cemetery authority shall provide the board with the following:

(a) A written investment and distribution policy in which future distributions from the endowment care fund will be total return distribution amounts rather than net ordinary income distribution amounts. The investment goals shall be to achieve principal growth through investments including, but not limited to, equity investments, as well as achieve current income through investments including, but not limited to, income investments.

(b) An amended endowment care trust agreement to clearly show intent to use the total return distribution method.

(c) A written document establishing the average fair market value signed by the cemetery authority and/or trustee(s), and supporting documents.

(d) Completed application form indicating the total return percentage and signed by the cemetery authority.

(2) The application shall be considered approved unless the cemetery authority or trustee is notified otherwise by the board within thirty days of receipt. Such notification shall contain details of the information needed to remedy any deficiencies in the application.

(3) The maximum total return percentage for the first year will be four percent. The cemetery authority or trustee may submit a written request to the board to modify the total return percentage twelve months after implementation of the total return distribution method.

(4) If the cemetery authority or trustee alters the total return percentage, the cemetery authority or trustee shall send written notice to the board. This notification shall be made before the first distribution is taken based on the new total return percentage and shall contain the revised total return percentage and the reason for the revision.

(5) The trustee shall distribute income to the cemetery authority at least annually or in more frequent installments agreed to by the trustee and the cemetery authority.

(6) A cemetery authority that converts the endowment care fund to a total return fund may elect to reconvert the fund to a net ordinary income fund by submitting written documentation to the board in support of the reconversion at least sixty days before the proposed effective date of the reconversion, including a copy of the trust agreement, notification on the proposed effective date of the reconversion, and any additional information required by the board.

(7) Unless an application and required documents for conversion to the total return distribution method have been received and approved by the board, a cemetery authority or trustee(s) may distribute only the net ordinary income from the endowment care fund for the general care, maintenance and embellishment of the cemetery.

NEW SECTION

WAC 98-12-052 Calculation of the average fair market value. The cemetery authority or trustee shall calculate the average fair market value of the fund at the beginning of each fiscal year. Appraisal methods and or sources utilized to determine fair market value to establish the initial value must remain the same in each reporting year.

(1) When calculating the average fair market value, if assets have been added to the fund during the years used to determine the average, the amount of each addition is added to all years in which such addition was not included. If extraordinary distributions were taken during any of the years used to determine the average, the amount of each distribution is subtracted from all years in which the distribution was not included.

(2) The cemetery authority or trustee shall exclude from the fair market value calculations any asset for which the fair market value cannot be established.

(3) The cemetery authority or trustee shall use the fair market value to calculate the average fair market value.

NEW SECTION

WAC 98-12-053 Limitation of total return distribution. (1) The board may take corrective measures including

reducing the total return percentage under one or more of the following circumstances:

(a) If the average fair market value of the endowment care fund declines by ten percent or more over a two-year period; or

(b) The fair market value of the fund at the beginning of a fiscal year is less than eighty percent of the fair market value of the fund the first day of the fiscal year when the endowment care fund started making distributions based on the total return distribution method; or

(c) There is an uncorrected endowment care deficiency as determined by the board's audit of the endowment care funds.

(2) The board may evaluate the endowment care fund conditions and choose not to impose corrective measures if it finds that:

(a) The reasons are due to unusual or temporary factors not within the control of the cemetery authority or the trustee and which could not have been reasonably anticipated;

(b) The current investment policy of the fund is reasonably designed to protect the fund from further declines in fair market value; or

(c) The exception appears to be both necessary and appropriate for the continued protection of the endowment care fund.

(3) The cemetery authority or trustee(s) shall not utilize the total return distribution method for part of the endowment care assets and concurrently distribute net income for part of the endowment care assets. Endowment care distributions may only be taken as net ordinary income or the total return distribution method.

NEW SECTION

WAC 98-12-054 Fees and taxes. (1) In the event that the fees paid by the endowment care fund exceed one percent of the average fair market value, the amount in excess of one percent shall be paid from the distribution.

(2) Taxes may be paid from the corpus.

NEW SECTION

WAC 98-12-055 Annual reporting requirements for total return distribution method. The cemetery authority will provide the board with a report that includes the average fair market value used to determine distribution for the following year and maintain a record of the fair market value each year while using the total return distribution method.

As part of the cemetery endowment care annual report required by RCW 68.05.180 and 68.05.235, cemetery authorities approved to use the total return distribution method must file an addendum to the annual report which details the following:

(1) The asset allocation.

(2) The annual distribution to the cemetery authority.

(3) Any changes to the investment and distribution policy.

(4) Calculation of the average fair market value to determine the current year's distribution, and supporting documents.

(5) Any other information the board deems pertinent.

WSR 17-21-063
PROPOSED RULES
EASTERN WASHINGTON UNIVERSITY

[Filed October 16, 2017, 12:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-034.

Title of Rule and Other Identifying Information: Amending WAC 172-191-100 Student education records, directory information.

Hearing Location(s): On December 6, 2017, at 10 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Room 215A, Tawanka Hall, Cheney, WA 99004.

Date of Intended Adoption: February 23, 2018.

Submit Written Comments to: Joseph Fuxa, EWU, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 506-359-2874 [509-359-2874], email jfuxa@ewu.edu, by December 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The modifications to WAC 172-191-100 remove both the student's net identification number and date and place of birth from EWU's definition of directory information. This will further protect student directory information.

Reasons Supporting Proposal: The removal of the student net identification number and date and place of birth from the definition of directory information will provide additional security of student information.

Statutory Authority for Adoption: RCW 28B.35.120 (12); 34 C.F.R. 99.37.

Statute Being Implemented: 34 C.F.R. 99.37.

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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 this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

October 16, 2017
 Joseph Fuxa
 Labor Relations Manager

AMENDATORY SECTION (Amending WSR 09-19-064, filed 9/14/09, effective 10/15/09)

WAC 172-191-100 Directory information. Directory information is defined to include: Student's name, address, email address(~~(, student net identification number)~~), telephone number, (~~(date and place of birth,)~~) participation in officially recognized activities and sports, weight, height and birth dates of athletic team members; dates of attendance at the university, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

The university may release "directory information" unless the student files a written request restricting the disclosure of the information. A student's election to opt out of directory information disclosures does not prevent the university from disclosing or requiring a student to disclose his/her name, identifier, or university email address in a class in which the student is enrolled.

WSR 17-21-065
PROPOSED RULES
EASTERN WASHINGTON UNIVERSITY

[Filed October 16, 2017, 12:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-073.

Title of Rule and Other Identifying Information: Amending WAC 172-122-310 Use of tobacco, electronic cigarettes, and related products.

Hearing Location(s): On December 6, 2017, at 10 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Room 215A, Tawanka Hall, Cheney, WA 99004.

Date of Intended Adoption: February 23, 2018.

Submit Written Comments to: Joseph Fuxa, EWU, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 506-359-2874 [509-359-2874], email jfuxa@ewu.edu, by December 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The modifications to WAC 172-122-310 will create a designated smoke-free area in the Arévalo Student Mall on the Cheney, Washington campus.

Reasons Supporting Proposal: The student body has made a request to consider making all or part of the campus smoke-free.

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

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

Name of Proponent: Ashley Jenniges, associated students of EWU, health representative, private.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implemen-

tation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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 this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

October 16, 2017

Joseph Fuxa

Labor Relations Manager

AMENDATORY SECTION (Amending WSR 12-08-019, filed 3/26/12, effective 4/26/12)

WAC 172-122-310 Use of tobacco, electronic cigarettes, and related products. Eastern Washington University is committed to providing a safe and healthy environment for its employees, students and visitors. In light of the associated health risks, the use of tobacco, electronic cigarettes, and related products in or on university owned or leased property is restricted as described herein.

(1) The use of tobacco, electronic cigarettes, and related products is prohibited:

(a) Within any building or vehicle owned or leased by EWU, to include residence halls and university apartments; and

(b) Within twenty-five feet of entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by EWU; and

(c) Anywhere within the boundaries of the Arévalo Student Mall. The Arévalo Student Mall is enclosed by a rectangle surrounded by the southwest elevation of Patterson Hall, the northwest elevation of Tawanka Hall, the northeast elevation of JFK Library and the southeast elevation of the Pence Union Building.

(2) For the purposes of this section, "tobacco, electronic cigarettes, and related products" includes any cigarette, cigar, pipe, bidi, clove cigarette, e-cigarette/cigar/pipe, waterpipe (hookah) and smokeless or spit tobacco, dissolvable tobacco, snuff or snoose.

(3) Distribution or sale of tobacco, electronic cigarettes, or related products in or on EWU owned or leased property is prohibited. Advertising or sponsorship of tobacco, electronic cigarettes or related products is prohibited on EWU property or at University-affiliated events, including the use of brand or corporate names, trademarks, logos, symbols or mottos. EWU will neither solicit nor accept any grant or gift from a manufacturer, distributor or retailer whose principal business is tobacco, electronic cigarettes, or related products.

(4) Any person intentionally violating this section may be subject to a civil fine of up to one hundred dollars. Local

law enforcement agencies may enforce this section by issuing a notice of infraction, assessed in the same manner as traffic infractions, as described under chapter 70.160 RCW. Any student, staff or faculty member who violates this section may also be subject to disciplinary action by the university.

WSR 17-21-066

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 16, 2017, 12:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-145.

Title of Rule and Other Identifying Information: Amending WAC 172-90-100, student academic integrity, violations and sanctions.

Hearing Location(s): On December 6, 2017, at 10 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Room 215A, Tawanka Hall, Cheney, WA 99004.

Date of Intended Adoption: February 23, 2018.

Submit Written Comments to: Joseph Fuxa, EWU, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 506-359-2874 [509-359-2874], email jfuxa@ewu.edu, by December 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The modifications to WAC 172-90-100 will add a sentence to indicate that sanctions of suspension or expulsion may be noted on a student's transcript.

Reasons Supporting Proposal: This is based upon recommendations developed by the American Association of Collegiate Registrars and Admissions Officers. A similar rule is being proposed to the student conduct code so this would align the language of both codes.

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

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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 this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

October 16, 2017

Joseph Fuxa

Labor Relations Manager

AMENDATORY SECTION (Amending WSR 17-11-052, filed 5/15/17, effective 6/15/17)

WAC 172-90-100 Violations and sanctions. (1) **Violations:** Violations of academic integrity involve the use or attempted use of any method or technique enabling a student to misrepresent the quality or integrity of any of his or her work. Violations of academic integrity include, but are not limited to:

- (a) Plagiarism: Representing the work of another as one's own work;
- (b) Preparing work for another that is to be used as that person's own work;
- (c) Cheating by any method or means;
- (d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or
- (e) Knowingly furnishing false information to a university official relative to academic matters.

(2) Classes of violations:

(a) Class I violations are acts that are mostly due to ignorance, confusion and/or poor communication between instructor and class, such as an unintentional violation of the class rules on collaboration. Sanctions for class I offenses typically include a reprimand, educational opportunity, and/or a grade penalty on the assignment/test.

(b) Class II violations are acts involving a deliberate failure to comply with assignment directions, some conspiracy and/or intent to deceive, such as use of the internet when prohibited, fabricated endnotes or data, or copying answers from another student's test. Sanctions for class II offenses typically include similar sanctions as described for class I violations, as well as a course grade penalty or course failure.

(c) Class III violations are acts of violation of academic integrity standards that involve significant premeditation, conspiracy and/or intent to deceive, such as purchasing or selling a research paper. Sanctions for class III violations typically include similar sanctions as given for class I and II violations, as well as possible removal from the academic program and/or suspension or expulsion.

(3) **Sanctions:** A variety of sanctions may be applied in the event that a violation of academic integrity is found to have occurred. Sanctions are assigned based primarily on the class of the violation and whether or not the student has previously violated academic integrity rules. Absent extenuating circumstances, assigned sanctions are imposed without delay and are not held in abeyance during appeal actions. Sanctions may be combined and may include, but are not limited to:

- (a) Verbal or written reprimand;
- (b) Educational opportunity, such as an assignment, research or taking a course or tutorial on academic integrity;
- (c) Grade penalty for the assignment/test;

- (d) Course grade penalty;
- (e) Course failure;
- (f) Removal from the academic program;
- (g) Suspension for a definite period of time; and
- (h) Expulsion from the university.

If a student was previously found to have violated an academic integrity standard, the sanction imposed for any subsequent violations should take into account the student's previous behavior. Sanctions of suspension or expulsion may be noted on a student's transcript.

(4) Sanctioning authorities:

(a) Instructors may impose reprimands, educational opportunities, grade penalties, and/or course failure sanctions and may recommend more severe sanctions.

(b) The academic integrity board has the authority to impose the same sanctions as an instructor, or to modify any sanctions imposed by the instructor. In addition, the AIB may remove a student from an academic program, with the concurrence of the instructor and the department chair. The AIB may also refer the case for an AIB hearing per WAC 172-90-170 for cases where possible sanctions include suspension or expulsion.

(c) An AIB hearing panel's recommendation to suspend or expel a student will be forwarded to the director of student rights and responsibilities. The director of student rights and responsibilities will ensure the student is provided with a full council hearing under the Student conduct code, chapter 172-121 WAC. In such cases, a member of the AIB hearing panel will serve as the "complainant" for purposes of the student conduct code process. The AIB hearing panel member will explain the hearing panel's findings and recommendations to the student discipline council. The student discipline council will make its own factual determinations and may impose a sanction of suspension or expulsion, or a lesser sanction, in accordance with the student conduct code.

WSR 17-21-067

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 16, 2017, 12:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-146.

Title of Rule and Other Identifying Information: Amending WAC 172-121-210, student conduct code, sanctions.

Hearing Location(s): On December 6, 2017, at 10 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Room 215A, Tawanka Hall, Cheney, WA 99004.

Date of Intended Adoption: February 23, 2018.

Submit Written Comments to: Joseph Fuxa, EWU, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 506-359-2874 [509-359-2874], email jfuxa@ewu.edu, by December 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The modifications

to WAC 172-121-210 will add two sentences to indicate that sanctions of suspension or expulsion may be noted on a student's transcript.

Reasons Supporting Proposal: This is based upon recommendations developed by the American Association of Collegiate Registrars and Admissions Officers. It is intended to provide a means to notify other colleges and universities that they should inquire about a former EWU student's disciplinary status.

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

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

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; **Implementation and Enforcement:** Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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 this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

October 16, 2017

Joseph Fuxa

Labor Relations Manager

AMENDATORY SECTION (Amending WSR 17-17-031, filed 8/9/17, effective 9/9/17)

WAC 172-121-210 Sanctions. If any student or student organization is found to have committed any of the offenses described in WAC 172-121-200, one or more of the sanctions described in this section may be imposed against the student or student organization. Imposed sanctions are effective as of the date the CRO or council issues its decision unless the decision specifically identifies an alternative date. Failure to comply with any imposed sanction may result in additional sanctions.

(1) Individual student sanctions:

(a) **Admonition:** An oral statement to a student that he/she has violated university rules and regulations.

(b) **Warning:** A notice to the student or student organization that they have violated the standards for student conduct and that any repeated or continuing violation of the same standard, within a specified period of time, may result in more severe disciplinary action. A warning may be verbal or written.

(c) **Censure:** A written reprimand for violation of specified regulations. A censure will also state that more severe disciplinary sanctions may be imposed if the student or stu-

dent organization is found in violation of any regulation within a stated period of time.

(d) **Disciplinary probation:** A formal action which places one or more conditions, for a specified period of time, on the student's continued attendance. Disciplinary probation sanctions will be executed in writing and will specify the probationary conditions and the period of the probation. A disciplinary probation notice will also inform the student that any further misconduct will automatically involve consideration of suspension. Probationary conditions may include, but are not limited to:

(i) Restricting the student's university-related privileges;

(ii) Limiting the student's participation in extra-curricular activities; and/or

(iii) Enforcing a "no contact" order which would prohibit direct or indirect physical and/or verbal contact with specific individuals or groups.

(e) **Restitution:** Reimbursement to the university or others for damage, destruction, or other loss of property suffered as a result of theft or negligence. Restitution also includes reimbursement for medical expenses incurred due to conduct code violations. Restitution may take the form of appropriate service or other compensation. Failure to fulfill restitution requirements will result in cancellation of the student's registration and will prevent the student from future registration until restitution conditions are satisfied.

(f) **Fines:** The university conduct review officer and the student disciplinary council may assess monetary fines up to a maximum of four hundred dollars against individual students for violation of university rules or regulations or for failure to comply with university standards of conduct. Failure to promptly pay such fines will prevent the student from future registration. Failure to pay may also result in additional sanctions.

(g) **Discretionary sanctions:** Work assignments, service to the university community or other related discretionary assignments for a specified period of time as directed by the hearing authority.

(h) **Loss of financial aid:** In accordance with RCW 28B.30.125, a person who participates in the hazing of another forfeits entitlement to state-funded grants, scholarships or awards for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(i) **Assessment:** Referral for drug/alcohol or psychological assessment may be required. Results of the assessment may lead to the determination that conditions of treatment and further assessment apply to either continued attendance or return after a period of suspension.

(j) **Suspension:** Exclusion from classes and other privileges or activities for a specified period of time. Suspensions will be executed through a written order of suspension and will state all restrictions imposed by the suspension, as well as the suspension period and what conditions of readmission, if any, are ordered. Suspension is subject to the processes outlined in this chapter except any suspension must also be approved by the dean of students and the vice president for student affairs before such sanction is imposed. Suspensions

may be noted on the student's transcript during the period of time the suspension is in effect.

(k) Expulsion: Permanent separation of the student from the university with no promise (implied or otherwise) that the student may return at any future time. The student will also be barred from university premises. ~~((Expulsion actions will be accomplished by issuing both an order of expulsion and a notice against trespass. The notice against trespass may be given by any manner specified in chapter 9A.52 RCW.))~~ Expulsion is subject to the processes outlined in this chapter except any expulsion must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed. Expulsions may be noted on the student's transcript.

(l) Loss of institutional, financial aid funds: Formal withholding of all or a part of institutional funds currently being received by the student or promised for future disbursement to the student for a specified period of time. Loss of financial aid is subject to the processes outlined in this chapter except any such loss must be approved by the dean of students and the vice president for student affairs before such sanction is imposed.

(m) Revocation of degree: A degree awarded by the university may be revoked for fraud, misrepresentation, or other violation of law or university standards. Revocation of a degree is subject to processes outlined in this chapter except that revocation of a degree must also be approved by the university president.

(2) Student organizations and/or group sanctions: Any of the above sanctions may be imposed in addition to those listed below:

(a) Probation: Formal action placing conditions on the group's continued recognition by or permission to function at the university. The probationary conditions will apply for a specified period of time. Violation of the conditions of probation or additional violations while under probation may result in more severe sanctions;

(b) Social probation: Prohibition of the group from sponsoring any organized social activity, party or function, or from obtaining a permission for the use of alcoholic beverages at social functions for a specified period of time;

(c) Restriction: The temporary withdrawal of university or ASEWU recognition for a group, club, society or other organization. Restriction is subject to the processes outlined in this chapter except any restriction must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(d) Revocation: The permanent withdrawal of university or ASEWU recognition for a group, club, society or other organization. Revocation is subject to the processes outlined in this chapter except any revocation must also be approved by the dean of students and the vice president of student affairs before such sanction is imposed;

(e) Additional sanctions: In addition to or separately from the above, any one or a combination of the following may be concurrently imposed on the group:

- (i) Exclusion from intramural competition as a group;
- (ii) Denial of use of university facilities for meetings, events, etc.;
- (iii) Restitution; and/or

(iv) Fines.

WSR 17-21-068

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 16, 2017, 12:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-175.

Title of Rule and Other Identifying Information: Amending WAC 172-10-090, public records requests, review of denial of public records.

Hearing Location(s): On December 6, 2017, at 10 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Room 215A, Tawanka Hall, Cheney, WA 99004.

Date of Intended Adoption: February 23, 2018.

Submit Written Comments to: Joseph Fuxa, EWU, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 506-359-2874 [509-359-2874], email jfuxa@ewu.edu, by December 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The modifications to WAC 172-10-090 will clarify who receives a petition for review of denial of public records.

Reasons Supporting Proposal: The modification is being made to reflect personnel changes.

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

Statute Being Implemented: Chapter 42.56 RCW, WAC 44-14-080.

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

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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 this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

October 16, 2017
Joseph Fuxa
Labor Relations Manager

AMENDATORY SECTION (Amending WSR 14-24-034, filed 11/24/14, effective 12/25/14)

WAC 172-10-090 Review of denials of public records. (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the ~~((associate to the))~~ vice president for business and finance, who will immediately consider the petition and either affirm or reverse the denial within two business days following the university's receipt of the petition, or within such other time as Eastern Washington University and the requestor mutually agree to.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the university denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160. A requestor may initiate such a review by sending a request for review to: Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504-0100 or publicrecords@atg.wa.gov.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

WSR 17-21-069

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed October 16, 2017, 12:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-015.

Title of Rule and Other Identifying Information: Amending WAC 172-10-080, public records requests, costs of providing copies of public records.

Hearing Location(s): On December 6, 2017, at 10 a.m., at Eastern Washington University (EWU), Main Campus, 526 5th Street, Room 215A, Tawanka Hall, Cheney, WA 99004.

Date of Intended Adoption: February 23, 2018.

Submit Written Comments to: Joseph Fuxa, EWU, 526 5th Street, 314 Showalter Hall, Cheney, WA 99004, email jfuxa@ewu.edu, fax 509-359-2874, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Joseph Fuxa, phone 509-359-7496, fax 506-359-2874 [509-359-2874], email jfuxa@ewu.edu, by December 6, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The modifications to WAC 172-10-080 are needed to comply with EHB 1595 and the subsequent changes to RCW 42.56.070.

Reasons Supporting Proposal: The modification is being made to comply with HB [EHB] 1595 and the associated changes to RCW 42.56.070.

Statutory Authority for Adoption: RCW 28B.35.120 (12), 42.56.070.

Statute Being Implemented: RCW 42.56.070.

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: Implementing changes to RCW 42.56.070.

Name of Proponent: EWU, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Fuxa, 314 Showalter Hall, 509-359-7496; Implementation and Enforcement: Dr. Mary Cullinan, 214 Showalter Hall, 509-359-6362.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.5.328 [34.05.328] (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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 this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW [no further information supplied by agency].

October 16, 2017

Joseph Fuxa
Labor Relations Manager

AMENDATORY SECTION (Amending WSR 14-24-034, filed 11/24/14, effective 12/25/14)

WAC 172-10-080 Costs of providing copies of public records. (1) The following copy fees and payment procedures apply to requests under chapter 42.56 RCW received on or after July 23, 2017. Pursuant to RCW 42.56.120 (2)(b), Eastern Washington University is not calculating all actual costs for copying records because to do so would be unduly burdensome as the university does not have the resources to conduct a study to determine all actual copying costs, it is difficult to calculate all costs directly incident to copying records, and to conduct such a study would interfere with other essential university functions.

(2) Costs for ~~((paper))~~ copies. The university will charge for copies of records pursuant to the default fees in RCW

42.56.120 (2)(b) and (c). The university may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract or other agreement with a requestor. A copy of the university's fee schedule will be available on its public records web site.

(3) The university may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(4) There is no fee for inspecting public records. ((A requestor may obtain standard photocopies for fifteen cents per page.)) Before beginning to make the copies, the public records officer may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. Eastern Washington University will not charge sales tax when it makes copies of public records.

~~(((2) Costs for electronic records. The cost of electronic copies of records shall be five dollars for information on a CD-ROM. The cost of scanning existing university paper or other nonelectronic records is ten cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee.~~

~~(3))~~ (5) Costs of mailing. Eastern Washington University may also charge actual costs of mailing, including the cost of the shipping container.

~~(((4))~~ (6) Payment. Payment may be made by cash, check, or money order to Eastern Washington University.

WSR 17-21-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed October 16, 2017, 12:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-01-038.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-444-0030 What additional work requirements and time limits is an able-bodied adult without dependents (ABAWD) subject to in order to be eligible for basic food?, 388-444-0045 How does an ABAWD regain eligibility for basic food after being closed for the three-month limit? and 388-444-0065 Am I eligible for basic food if I quit my job or reduce my work effort?

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed amendments update the eligibility policies of work registrants, including but not limited to ABAWDs population, bringing them into compliance with federal regulations.

Reasons Supporting Proposal: The Food and Nutrition Services (FNS) approved the department's waiver request to exempt all counties except for most of King County (Muckleshoot Reservation residents remain exempt). This waiver is in effect from January 1, 2017, through December 31, 2018.

Clients who were previously identified as ABAWDs under the current version of WAC (those in Pierce and Snohomish counties) no longer need to participate in work requirements to remain eligible for food benefits. Clients who have already been terminated under these rules may be eligible under the new waiver.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.04.500, 74.08A.120.

Rule is necessary because of federal law, 7 C.F.R. 273.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Holly St. John, P.O. Box 45470, Olympia, WA 98504, 360-725-4895.

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

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Is exempt under RCW 34.05.328 (5)(b)(vii).

October 12, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-07-003, filed 3/3/16, effective 4/3/16)

WAC 388-444-0030 (~~What additional work requirements and time limits is an~~) **Are able-bodied adults without dependents (ABAWD) subject to (in order) additional work requirements and time limits to be eligible for basic food?** (1) An able-bodied adult without dependents (ABAWD) is a person who:

- (a) Is age eighteen through forty-nine; ~~(and)~~
- (b) Is fit for work and not exempted under WAC ~~((388-444-0035(1)))~~ 388-444-0035; and
- (c) Does not receive food assistance in an assistance unit (AU) that includes a minor child~~(s)~~. ~~(We will consider the AU to include a minor child even if the minor child is not eligible to receive food assistance (in that AU; or~~
- ~~(d) Is not otherwise exempt under WAC 388-444-0035).~~

(2) If you are an ABAWD, you must participate in work activities under subsection (4) ~~((unless you are exempt from ABAWD requirements under WAC 388-444-0035))~~ of this section.

(3) Nonexempt ABAWDs who live outside of King county~~(, Snohomish county or Pierce county, and nonexempt ABAWDs who live within the city of Tacoma or the city of Lakewood,))~~ or on the Muckleshoot Tribal Reservation may continue to receive food assistance until December 31, ~~((2016;))~~ 2018 even if ~~((the ABAWD fails))~~ they fail to participate in work-related activities.

(4) ~~((Beginning January 1, 2016;))~~ A nonexempt ABAWD is not eligible to receive food assistance for more than three full months ~~(which do not have to be consecutive months)~~, not including any partial benefit months in a thirty-six month period, unless the ABAWD:

(a) Works ~~((at least twenty hours per week, averaged monthly (eighty hours per month). Working includes))~~ an average of eighty hours per month, including:

- (i) Work in exchange for money;
- (ii) Work in exchange for goods or services ("in kind" work);
- (iii) Unpaid work that is verified according to department requirements; or
- (iv) Any combination of ~~((4)(a)(i))~~ (a)(i) through ~~((4)(a)(iii))~~ (a)(iii) of this subsection; or

(b) Participates in one of the following work programs and is meeting the requirements of that work program:

- (i) The Workforce Innovation and Opportunity Act of 2014;
- (ii) Section 236 of the Trade Act of 1974;
- (iii) A state-approved employment and training program at least an average of eighty hours per month; or

~~((iv))~~ (c) An unpaid work program as provided in WAC 388-444-0040.

AMENDATORY SECTION (Amending WSR 10-23-112, filed 11/17/10, effective 12/18/10)

WAC 388-444-0045 **How does an ABAWD regain eligibility for basic food after (being closed for) the three-month limit?** (1) If you have ~~((used up your))~~ received three months of benefits as an able-bodied adult without depen-

dents (ABAWD) ~~((under))~~ and are not eligible due to nonparticipation in the work requirements of WAC 388-444-0030, you ~~((can))~~ may regain eligibility after reapplying for basic food by:

- (a) Working eighty hours or more during a thirty-day period;
- (b) Participating in and meeting the requirements of a work program as outlined in WAC 388-444-0030 for eighty hours or more during a thirty-day period;
- (c) Participating in and meeting the requirements of the community service part of a workfare program; or
- (d) Meeting any of the work requirements in (a) through (c) of this subsection in the thirty days after the date you have applied for basic food.

(2) If you regain eligibility for food assistance under subsection (1) of this section, you are eligible for basic food ~~((from the date you applied for Basic Food and as long as you continue to meet the requirements of WAC 388-444-0030)).~~

(3) If you meet all other requirements for basic food and you have regained eligibility under subsection (1) of this section, you ~~((may))~~ will receive an additional three consecutive months of basic food benefits when you:

- (a) Lose employment; or
- (b) ~~((Lose the opportunity to participate))~~ Stop participating in a work or workfare program.

(4) We only allow the additional three months of basic food ~~((under subsection (3))~~ once in each thirty-six month period under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-21-126, filed 10/22/13, effective 11/22/13)

WAC 388-444-0065 **Am I eligible for basic food if I quit my job or reduce my work effort?** (1) You are not eligible for basic food if you voluntarily quit your current job without good cause as defined in WAC 388-444-0070, and:

- (a) You were working or self-employed ~~((and working))~~ for thirty hours or more per week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours; ~~((and))~~
- (b) The day you quit or the last day you worked was within ~~((sixty))~~ thirty days before you applied for basic food or any time after application; and
- (c) At the time ~~((of))~~ you quit or the last day you worked, you would have been required to register for work as defined in WAC 388-444-0005.

(2) You are not eligible for basic food if you voluntarily reduce your work effort without good cause as defined in WAC 388-444-0070, and:

- (a) You were working or self-employed ~~((and working))~~ for thirty hours or more per week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours; ~~((and))~~
- (b) ~~((The reduction was))~~ You reduced your work effort within ~~((sixty))~~ thirty days before you applied for basic food or any time after application; ~~((and))~~
- (c) ~~((If))~~ After the reduction, you are working less than thirty hours per week or your weekly earnings are not at least equal to the federal minimum wage multiplied by thirty hours; and

(d) At the time of the reduction you would have been required to register for work as defined in WAC 388-444-0005.

(3) You are not eligible to receive basic food if you have participated in a strike against a federal, state, or local government and have lost your employment because of such participation within thirty days of application.

(4) The following are not considered voluntary quits:

(a) Ending a self-employment enterprise; or

(b) Resigning at the request of the employer.

WSR 17-21-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed October 16, 2017, 12:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-101.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-478-0015 Need standards for cash assistance, to revise the basic need standards for cash assistance.

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-478-0015 in order to revise the basic need standards for cash assistance programs.

Reasons Supporting Proposal: The department is required by RCW 74.04.770 to establish standards of need for cash assistance programs on an annual basis.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090.

Statute Being Implemented: RCW 74.04.770.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Anna Minor, P.O. Box 45470, Olympia, WA 98504, 360-725-4894.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." This rule affects the need standards for cash assistance as outlined in WAC 388-478-0015.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 12, 2017
 Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-23-146, filed 11/22/16, effective 1/1/17)

WAC 388-478-0015 Need standards for cash assistance. The need standards for cash assistance units are:

(1) For assistance units with an obligation to pay shelter costs:

Assistance <u>unit size</u>	Need <u>standard</u>
1	((1,348)) <u>\$1,388</u>
2	((1,706)) <u>1,756</u>
3	((2,106)) <u>2,168</u>
4	((2,485)) <u>2,558</u>
5	((2,864)) <u>2,948</u>
6	((3,243)) <u>3,339</u>
7	((3,749)) <u>3,859</u>
8	((4,149)) <u>4,271</u>
9	((4,549)) <u>4,683</u>
10 or more	((4,949)) <u>5,095</u>

(2) For assistance units with shelter provided at no cost:

Assistance <u>unit size</u>	Need <u>standard</u>
1	((645)) <u>\$643</u>
2	((816)) <u>813</u>
3	((1,008)) <u>1,004</u>
4	((1,189)) <u>1,185</u>
5	((1,371)) <u>1,365</u>
6	((1,552)) <u>1,546</u>
7	((1,794)) <u>1,787</u>
8	((1,986)) <u>1,978</u>
9	((2,177)) <u>2,169</u>
10 or more	((2,369)) <u>2,359</u>

WSR 17-21-073
PROPOSED RULES
SPOKANE REGIONAL
CLEAN AIR AGENCY

[Filed October 16, 2017, 1:18 p.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amendments to Spokane Regional Clean Air Agency (SRCAA) Regulation I: Article IV Registration, amending Exhibit R, 9.e.12, 63., and 64.; Article V New, Modified, and Temporary Stationary Sources and Replacement or Alteration of Emission Control Equipment, amending Section 5.02.P.2.; Article VI Emissions Prohibited, adding Section 6.18; and Article X Fees and Charges, adding Section 10.15.

Hearing Location(s): On December 7, 2017, at 9:30 a.m., at SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207.

Date of Intended Adoption: December 7, 2017.

Submit Written Comments to: Margee Chambers, 3104 East Augusta Avenue, Spokane, WA 99207, email publiccomment@spokanecleanair.org, fax 509-477-6828, by December 7, 2017, close of hearing. Note, please submit comments by December 1, 2017, for comments to be included [included] in the prehearing presentation.

Assistance for Persons with Disabilities: Contact Mary Kataoka, phone 509-477-4727 ext. #100, fax 509-477-6828, email mkataoka@spokanecleanair.org, by December 5, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed amendments to SRCAA Regulation I, is to develop a regulatory program for marijuana producers and processors to minimize air contaminants. Amendments to Article IV, Exhibit R 63. and 64. includes marijuana production and processing in SRCAA's registration program, and 9.e.12 to include marijuana processing equipment if it triggers air permitting requirements. Amendments to Article V, Section 5.02.P.2., exempts marijuana producers and processors from air permitting requirements, unless the operations have equipment that triggers permitting requirements. New Section 6.18 in Article VI includes standards to minimize air contaminants from marijuana producers and processors. New Section 10.15 in Article X develops the registration fee structure for marijuana producers and processors. The anticipated effects include reductions in air contaminant emissions, to ensure that marijuana production and processing operations are in compliance with air quality regulations, to maintain an accurate inventory of air contaminants released into Spokane County's air, and to begin receiving revenue to support program costs.

Reasons Supporting Proposal: The production and processing of marijuana releases volatile organic compounds (VOC) which cause odors. Under Washington state law, VOCs and odors constitute both air contaminants and air pollution (RCW 70.94.030 (1) and (2)) and are subject to regulation. To protect air quality, a person cannot cause or allow the emissions of any air contaminant in sufficient quantities and of such characteristics and duration as are, or are likely to be: (a) Injurious to the health or safety of human, animal, or plant

life; (b) injurious or damaging to property; or (c) which unreasonably interferes with enjoyment of life and property (SRCAA Article VI, Section 6.04(C) and RCW 70.94.030 (2)).

The intent of the proposed amendments to SRCAA Regulation I, is to protect air quality in Spokane County by requiring a source category, marijuana production and processing operations, to meet standards that minimize the release of air contaminants by the industry. SRCAA will verify that operations are in compliance with air quality regulations, maintain an accurate inventory of air contaminants released into Spokane County's air, and begin receiving revenue to support program costs.

Statutory Authority for Adoption: RCW 70.94.141.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Margee Chambers, SRCAA, 509-477-4727; Implementation: Executive Director, SRCAA, 509-477-4727; and Enforcement: Compliance Section Manager, Supervisory Engineer, and Executive Director, SRCAA, 509-477-4727.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. SRCAA is a local air pollution control agency. Per RCW 90.74.141, a cost-benefit analysis under RCW 34.05.328 does not apply to local air pollution control agencies.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 70.94.141.

Explanation of exemptions: SRCAA is a local air pollution control agency. Per RCW 70.94.141, a small business economic impact statement does not apply to local air pollution control agencies.

October 16, 2017
Margee Chambers
Rule Writer/SIP Planner

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 17-22 issue of the Register.

WSR 17-21-074
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed October 16, 2017, 2:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-13-108.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-105-0005 The daily medicaid payment rates for clients who have been

assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide AL, ARC, or EARC services.

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-105-0005 in order to update the CARE table of rates to reflect the rates currently being paid to providers.

Reasons Supporting Proposal: The fiscal year 18-20 operating budget changed some home and community providers' rates. This table of rates needs to be updated accordingly.

Statutory Authority for Adoption: RCW 74.39A.030 (3)(a).

Statute Being Implemented: SB [SSB] 5883.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Elizabeth Pashley, 4450 10th Avenue S.E., Lacey, WA 98503-5600, 360-725-2447; and Enforcement: Peter Graham, 4450 10th Avenue S.E., Lacey, WA 98503-5600, 360-725-2499.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is adjusting rates pursuant to legislative standards (RCW 34.05.328 (5)(b)(vi)).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 12, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-02-029, filed 12/28/16, effective 1/28/17)

WAC 388-105-0005 The daily medicaid payment rates for clients who have been assessed using the CARE tool and reside at an AFH or assisted living facility contracted to provide ((AL)) assisted living, ((ARC)) adult residential care, or ((EARC)) enhanced adult residential care services. For contracted adult family homes (AFH) and assisted living facilities contracted to provide assisted living (AL), adult residential care (ARC), or enhanced adult residential care (EARC) services, the department pays the following daily rates for medicaid residents who have been assessed using the comprehensive assessment reporting evaluation (CARE) tool:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	(\$67.22)	(\$72.64)	(\$47.67)	(\$47.67)	(\$52.47)
	<u>\$70.59</u>	<u>\$76.01</u>	<u>\$50.06</u>	<u>\$50.06</u>	<u>\$71.96</u>
A Med	(\$72.74)	(\$78.16)	(\$54.03)	(\$54.03)	(\$59.36)
	<u>\$76.38</u>	<u>\$81.80</u>	<u>\$56.74</u>	<u>\$56.74</u>	<u>\$74.74</u>
A High	(\$81.57)	(\$86.99)	(\$59.30)	(\$59.30)	(\$66.27)
	<u>\$85.66</u>	<u>\$91.08</u>	<u>\$62.27</u>	<u>\$62.27</u>	<u>\$81.23</u>
B Low	(\$67.22)	(\$72.64)	(\$47.67)	(\$47.67)	(\$52.72)
	<u>\$70.59</u>	<u>\$76.01</u>	<u>\$50.06</u>	<u>\$50.06</u>	<u>\$73.40</u>
B Med	(\$74.96)	(\$80.39)	(\$60.39)	(\$60.39)	(\$66.58)
	<u>\$78.72</u>	<u>\$84.14</u>	<u>\$63.42</u>	<u>\$63.42</u>	<u>\$79.78</u>
B Med-High	(\$84.83)	(\$90.25)	(\$64.19)	(\$64.19)	(\$71.24)
	<u>\$89.08</u>	<u>\$94.50</u>	<u>\$67.41</u>	<u>\$67.41</u>	<u>\$86.56</u>
B High	(\$89.28)	(\$94.70)	(\$73.31)	(\$73.31)	(\$81.27)
	<u>\$93.75</u>	<u>\$99.17</u>	<u>\$76.98</u>	<u>\$76.98</u>	<u>\$89.05</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
KING COUNTY

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
C Low	<u>(((\$72.74))</u>	<u>(((\$78.16))</u>	<u>(((\$54.03))</u>	<u>(((\$54.03))</u>	<u>(((\$59.36))</u>
	<u>\$76.38</u>	<u>\$81.80</u>	<u>\$56.74</u>	<u>\$56.74</u>	<u>\$81.03</u>
C Med	<u>(((\$81.57))</u>	<u>(((\$86.99))</u>	<u>(((\$67.70))</u>	<u>(((\$67.70))</u>	<u>(((\$75.43))</u>
	<u>\$85.66</u>	<u>\$91.08</u>	<u>\$71.09</u>	<u>\$71.09</u>	<u>\$93.33</u>
C Med-High	<u>(((\$101.43))</u>	<u>(((\$106.85))</u>	<u>(((\$90.09))</u>	<u>(((\$90.09))</u>	<u>(((\$98.41))</u>
	<u>\$106.51</u>	<u>\$111.93</u>	<u>\$94.60</u>	<u>\$94.60</u>	<u>\$98.41</u>
C High	<u>(((\$102.44))</u>	<u>(((\$107.86))</u>	<u>(((\$90.95))</u>	<u>(((\$90.95))</u>	\$99.76
	<u>\$107.57</u>	<u>\$112.99</u>	<u>\$95.51</u>	<u>\$95.51</u>	
D Low	<u>(((\$74.96))</u>	<u>(((\$80.38))</u>	<u>(((\$72.87))</u>	<u>(((\$72.87))</u>	<u>(((\$76.87))</u>
	<u>\$78.72</u>	<u>\$84.14</u>	<u>\$76.52</u>	<u>\$76.52</u>	<u>\$86.46</u>
D Med	<u>(((\$83.23))</u>	<u>(((\$88.65))</u>	<u>(((\$84.35))</u>	<u>(((\$84.35))</u>	<u>(((\$93.79))</u>
	<u>\$87.40</u>	<u>\$92.82</u>	<u>\$88.58</u>	<u>\$88.58</u>	<u>\$95.25</u>
D Med-High	<u>(((\$107.49))</u>	<u>(((\$112.91))</u>	<u>(((\$107.13))</u>	<u>(((\$107.13))</u>	\$112.59
	<u>\$112.88</u>	<u>\$118.30</u>	<u>\$112.50</u>	<u>\$112.50</u>	
D High	<u>(((\$115.79))</u>	<u>(((\$121.21))</u>	<u>(((\$115.79))</u>	<u>(((\$115.79))</u>	\$128.01
	<u>\$121.59</u>	<u>\$127.01</u>	<u>\$121.59</u>	<u>\$121.59</u>	
E Med	<u>(((\$139.84))</u>	<u>(((\$145.26))</u>	<u>(((\$139.84))</u>	<u>(((\$139.84))</u>	\$154.39
	<u>\$146.85</u>	<u>\$152.27</u>	<u>\$146.85</u>	<u>\$146.85</u>	
E High	<u>(((\$163.89))</u>	<u>(((\$169.31))</u>	<u>(((\$163.89))</u>	<u>(((\$163.89))</u>	\$180.80
	<u>\$172.10</u>	<u>\$177.52</u>	<u>\$172.10</u>	<u>\$172.10</u>	

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
METROPOLITAN COUNTIES*

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	<u>(((\$61.69))</u>	<u>(((\$66.61))</u>	<u>(((\$47.67))</u>	<u>(((\$47.67))</u>	<u>(((\$52.47))</u>
	<u>\$64.78</u>	<u>\$69.70</u>	<u>\$50.06</u>	<u>\$50.06</u>	<u>\$70.78</u>
A Med	<u>(((\$65.02))</u>	<u>(((\$69.94))</u>	<u>(((\$51.91))</u>	<u>(((\$51.91))</u>	<u>(((\$57.06))</u>
	<u>\$68.28</u>	<u>\$73.20</u>	<u>\$54.51</u>	<u>\$54.51</u>	<u>\$73.49</u>
A High	<u>(((\$79.37))</u>	<u>(((\$84.29))</u>	<u>(((\$56.56))</u>	<u>(((\$56.56))</u>	<u>(((\$62.80))</u>
	<u>\$83.35</u>	<u>\$88.27</u>	<u>\$59.39</u>	<u>\$59.39</u>	<u>\$79.80</u>
B Low	<u>(((\$61.69))</u>	<u>(((\$66.61))</u>	<u>(((\$47.67))</u>	<u>(((\$47.67))</u>	<u>(((\$52.72))</u>
	<u>\$64.78</u>	<u>\$69.70</u>	<u>\$50.06</u>	<u>\$50.06</u>	<u>\$72.18</u>
B Med	<u>(((\$70.52))</u>	<u>(((\$75.44))</u>	<u>(((\$57.22))</u>	<u>(((\$57.22))</u>	<u>(((\$63.11))</u>
	<u>\$74.05</u>	<u>\$78.97</u>	<u>\$60.09</u>	<u>\$60.09</u>	<u>\$78.39</u>
B Med-High	<u>(((\$79.83))</u>	<u>(((\$84.75))</u>	<u>(((\$60.81))</u>	<u>(((\$60.81))</u>	<u>(((\$67.59))</u>
	<u>\$83.83</u>	<u>\$88.78</u>	<u>\$63.86</u>	<u>\$63.86</u>	<u>\$84.98</u>
B High	<u>(((\$87.07))</u>	<u>(((\$91.99))</u>	<u>(((\$71.25))</u>	<u>(((\$71.25))</u>	<u>(((\$79.00))</u>
	<u>\$91.43</u>	<u>\$96.35</u>	<u>\$74.82</u>	<u>\$74.82</u>	<u>\$87.41</u>
C Low	<u>(((\$65.02))</u>	<u>(((\$69.94))</u>	<u>(((\$52.12))</u>	<u>(((\$52.12))</u>	<u>(((\$57.48))</u>
	<u>\$68.28</u>	<u>\$73.20</u>	<u>\$54.73</u>	<u>\$54.73</u>	<u>\$79.61</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
C Med	(\$79.37) <u>\$83.35</u>	(\$84.29) <u>\$88.27</u>	(\$66.84) <u>\$70.19</u>	(\$66.84) <u>\$70.19</u>	(\$73.63) <u>\$91.57</u>
C Med-High	(\$98.10) <u>\$103.01</u>	(\$103.02) <u>\$107.93</u>	(\$83.73) <u>\$87.92</u>	(\$83.73) <u>\$87.92</u>	(\$91.53) <u>\$93.63</u>
C High	(\$99.09) <u>\$105.05</u>	(\$104.04) <u>\$108.97</u>	(\$89.04) <u>\$93.50</u>	(\$89.04) <u>\$93.50</u>	\$97.03
D Low	(\$70.52) <u>\$74.05</u>	(\$75.44) <u>\$78.97</u>	(\$71.87) <u>\$75.47</u>	(\$71.87) <u>\$75.47</u>	(\$75.20) <u>\$84.89</u>
D Med	(\$80.98) <u>\$85.04</u>	(\$85.90) <u>\$89.96</u>	(\$82.67) <u>\$86.81</u>	(\$82.67) <u>\$86.81</u>	(\$91.30) <u>\$93.44</u>
D Med-High	(\$103.98) <u>\$109.19</u>	(\$108.90) <u>\$114.11</u>	(\$104.50) <u>\$109.74</u>	(\$104.50) <u>\$109.74</u>	\$109.19
D High	(\$112.63) <u>\$118.27</u>	(\$117.55) <u>\$123.19</u>	(\$112.63) <u>\$118.27</u>	(\$112.63) <u>\$118.27</u>	\$123.88
E Med	(\$135.52) <u>\$142.31</u>	(\$140.44) <u>\$147.23</u>	(\$135.52) <u>\$142.31</u>	(\$135.52) <u>\$142.31</u>	\$149.01
E High	(\$158.40) <u>\$166.34</u>	(\$163.32) <u>\$171.23</u>	(\$158.40) <u>\$166.34</u>	(\$158.40) <u>\$166.34</u>	\$174.13

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
A Low	(\$60.61) <u>\$63.65</u>	(\$65.85) <u>\$68.89</u>	(\$47.67) <u>\$50.06</u>	(\$47.67) <u>\$50.06</u>	(\$52.47) <u>\$69.07</u>
A Med	(\$65.02) <u>\$68.28</u>	(\$70.26) <u>\$73.52</u>	(\$50.86) <u>\$53.41</u>	(\$50.86) <u>\$53.41</u>	(\$55.92) <u>\$71.67</u>
A High	(\$79.37) <u>\$83.38</u>	(\$84.61) <u>\$88.59</u>	(\$55.66) <u>\$58.45</u>	(\$55.66) <u>\$58.45</u>	(\$61.67) <u>\$77.73</u>
B Low	(\$60.61) <u>\$63.65</u>	(\$65.85) <u>\$68.89</u>	(\$47.67) <u>\$50.06</u>	(\$47.67) <u>\$50.06</u>	(\$52.72) <u>\$70.42</u>
B Med	(\$70.52) <u>\$74.05</u>	(\$75.76) <u>\$79.29</u>	(\$56.16) <u>\$58.97</u>	(\$56.16) <u>\$58.97</u>	(\$61.96) <u>\$76.38</u>
B Med-High	(\$79.83) <u>\$83.83</u>	(\$85.07) <u>\$89.07</u>	(\$59.68) <u>\$62.67</u>	(\$59.68) <u>\$62.67</u>	(\$66.29) <u>\$82.71</u>
B High	(\$87.07) <u>\$91.43</u>	(\$92.31) <u>\$96.67</u>	(\$67.41) <u>\$70.79</u>	(\$67.41) <u>\$70.79</u>	(\$74.79) <u>\$85.04</u>
C Low	(\$65.02) <u>\$68.28</u>	(\$70.26) <u>\$73.52</u>	(\$50.86) <u>\$53.41</u>	(\$50.86) <u>\$53.41</u>	(\$55.92) <u>\$77.55</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE
NONMETROPOLITAN COUNTIES**

CARE CLASSIFICATION	AL Without Capital	AL With Capital	ARC	EARC	AFH
	Add-on	Add-on			
C Med	(\$79.37)	(\$84.61)	(\$63.20)	(\$63.20)	(\$70.85)
	<u>\$83.35</u>	<u>\$88.59</u>	<u>\$66.67</u>	<u>\$66.37</u>	<u>\$89.04</u>
C Med-High	(\$98.10)	(\$103.34)	(\$80.54)	(\$80.54)	(\$88.10)
	<u>\$103.01</u>	<u>\$108.25</u>	<u>\$84.58</u>	<u>\$84.58</u>	<u>\$91.01</u>
C High	(\$99.09)	(\$104.33)	(\$84.18)	(\$84.18)	(\$91.84)
	<u>\$104.05</u>	<u>\$109.29</u>	<u>\$88.40</u>	<u>\$88.40</u>	<u>\$93.08</u>
D Low	(\$70.52)	(\$75.76)	(\$67.96)	(\$67.96)	(\$71.19)
	<u>\$74.05</u>	<u>\$79.29</u>	<u>\$71.36</u>	<u>\$71.36</u>	<u>\$82.62</u>
D Med	(\$80.98)	(\$86.22)	(\$78.17)	(\$78.17)	(\$86.40)
	<u>\$85.04</u>	<u>\$90.28</u>	<u>\$82.09</u>	<u>\$82.09</u>	<u>\$90.83</u>
D Med-High	(\$103.98)	(\$109.22)	(\$98.79)	(\$98.79)	(\$103.33)
	<u>\$109.19</u>	<u>\$114.43</u>	<u>\$103.74</u>	<u>\$103.74</u>	<u>\$104.36</u>
D High	(\$106.48)	(\$111.72)	(\$106.48)	(\$106.48)	\$117.20
	<u>\$111.81</u>	<u>\$117.05</u>	<u>\$111.81</u>	<u>\$111.81</u>	
E Med	(\$128.11)	(\$133.35)	(\$128.11)	(\$128.11)	\$140.94
	<u>\$134.53</u>	<u>\$139.77</u>	<u>\$134.53</u>	<u>\$134.53</u>	
E High	(\$149.75)	(\$154.99)	(\$149.75)	(\$149.75)	\$164.70
	<u>\$157.25</u>	<u>\$162.49</u>	<u>\$157.25</u>	<u>\$157.25</u>	

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

WSR 17-21-076**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed October 16, 2017, 2:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-155.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-0225 How do I pay for MPC?, as a result of the passage of SB 5118.

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU

RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-106-0225 to reflect an increase in the personal needs allowance effective January 1, 2018, and each year thereafter, as a result of the passage of SB 5118. This adjustment is subject to legislative funding.

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090.

Statute Being Implemented: A new section in chapter 74.09 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jamie Tong, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-3293.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 12, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-11-049, filed 5/15/15, effective 7/1/15)

WAC 388-106-0225 How do I pay for ((MPC)) medicaid personal care? You pay for medicaid personal care (MPC) as follows:

(1) If you live in your own home, you do not ((participate toward)) share in the cost of your personal care services.

(2) If you live in a residential facility ((and are:

(a) ~~An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to), you:~~

(a) Keep a personal needs allowance ((of sixty-two dollars and seventy-nine cents)) as described in WAC 182-513-1105;

(b) ((An SSI beneficiary who receives SSI and another source of income, you only)) Pay for ((board and)) room((- You are allowed to keep a personal needs allowance of sixty-two dollars and seventy-nine cents:)) and board as described in WAC 182-513-1105; and

(c) ((An SSI-related person under WAC 182-512-0050, you)) May be required to ((participate towards)) share in the cost of your personal care ((services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in)) under WAC 182-513-1205. ((You are allowed to keep a personal needs allowance of sixty-two dollars and seventy-nine cents:

~~(d) An aged, blind, disabled (ABD) cash assistance client eligible for categorically needy medicaid coverage in an adult family home (AFH), you are allowed to keep a personal needs allowance (PNA) of thirty-eight dollars and eighty-four cents per month. The remainder of your income must be paid to the AFH as your room and board up to the ALTSA room and board standards; or~~

~~(e) An aged, blind, disabled (ABD) cash assistance client eligible for categorically needy medicaid coverage in an assisted living facility, you are authorized a personal needs grant of up to thirty-eight dollars and eighty-four cents per month;~~

~~(f) A Washington apple health MAGI-based client as determined by WAC 182-505-0250, you pay only for room and board. If your income is less than the ALTSA room and board standard, you are allowed to keep a personal needs allowance of sixty-two dollars and seventy-nine cents and the remainder of your income goes to the provider for room and board.))~~

~~(3) ((Personal needs allowance (PNA) standards and the ALTSA room and board standard can be found at <http://www.hca.wa.gov/medicaid/eligibility/pages/standards.aspx>.~~

~~(4)) The department pays the residential care facility from the first day of service through the:~~

~~(a) Last day of service when the medicaid resident dies in the facility; or~~

~~(b) Day of service before the day the medicaid resident is discharged.~~

WSR 17-21-078
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS
[Filed October 16, 2017, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-119.

Title of Rule and Other Identifying Information: WAC 415-06-060 Public records fees.

Hearing Location(s): On November 22, 2017, at 10:30 a.m., at the Department of Retirement Systems, 6835 Capitol Boulevard, Room 115, Tumwater, WA 98501.

Date of Intended Adoption: November 22, 2017.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email Rules@drs.wa.gov, by November 21, 2017.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email Rules@drs.wa.gov, by November 17, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend the department's rule concerning fees for copying and providing public records, in compliance with EHB 1595 (chapter 304, Laws of 2017). This action seeks to make permanent the emergency rule that was filed on July 21, 2017, and published as WSR 17-16-030.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapter 42.56 RCW, EHB 1595 (chapter 304, Laws of 2017).

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

Name of Agency Personnel Responsible for Implementation: DRS Public Records Officer, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7299.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply and this proposed rule is not voluntarily made applicable by the agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not

subject to violation by a nongovernment party; rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

October 16, 2017
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending Order 4, filed 7/27/77)

WAC 415-06-060 ((Copying)) Fees. (1) No fee shall be charged for the inspection of public records ~~((The department shall charge a fee equal to the amount necessary to reimburse the department for its actual costs incident to any copying))~~ or for locating public records and making them available for copying. However, the department may charge fees for copying and providing copies of public records. Such fees will not exceed the rates established in RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017.

(2) Pursuant to RCW 42.56.120, as amended by section 3, chapter 304, Laws of 2017, the department declares for the following reasons that it would be unduly burdensome to calculate the actual costs of copying and providing copies of public records: Department resources were not allocated for performing a study to calculate the actual costs; the department lacks the necessary resources to perform such a study and calculations; and such a study would interfere with and disrupt other essential department functions.

WSR 17-21-080
PROPOSED RULES
SEATTLE COLLEGES
[Filed October 16, 2017, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-14-007.

Title of Rule and Other Identifying Information: Chapter 132F-116 WAC, Traffic rules and regulations.

Hearing Location(s): On November 28, 2017, at 1:00-3:00 p.m., at Seattle Colleges, Siegal Center, 1500 Harvard Avenue, 1st Floor Boardroom, Seattle, WA 98122.

Date of Intended Adoption: December 14, 2017.

Submit Written Comments to: Jennie Chen, 1500 Harvard Avenue, Seattle, WA 98122-3803, email wacinput@seattlecolleges.edu, fax 206-934-3894, by November 28, 2017, 5 p.m.

Assistance for Persons with Disabilities: Contact Jennie Chen, phone 206-934-3873, email wacinput@seattlecolleges.edu, by November 21, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed changes update language and reflect current practices.

Reasons Supporting Proposal: Rule has not been updated/reviewed since 1975.

Statutory Authority for Adoption: RCW 28B.50.140 (10).

Statute Being Implemented: RCW 28B.50.140(10).

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

Name of Proponent: Seattle Colleges, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kurt Buttlerman, Siegal Center, 206-934-4111.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The district is not one of the enumerated agencies listed in RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328.

Explanation of exemptions: Pursuant to RCW 34.05.328 (5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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 this rule.

October 16, 2017
Shouan Pan
Chancellor

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

WAC 132F-116-020 ((Permits required for vehicles)) Parking—Permits and restrictions. ((No person shall park or leave any vehicle, whether attended or unattended, upon any officially designated parking area of Seattle College District VI without a valid parking permit. No vehicle shall be parked in any parking area without a permit for that area, except state-owned vehicles used by the college.

(1) A valid permit is:

(a) An unexpired parking decal properly registered and displayed in accordance with instructions.

(b) An authorized temporary or visitor permit, displayed in accordance with the instructions on the permit.

(2) Parking permits are not transferable.

(3) The college reserves the right to refuse the issuance of a parking permit.) (1) Each campus president shall dele-

gate to one office or individual on campus the authority to enforce these traffic and parking rules and regulations. This person or office shall hereinafter be referred to as "parking enforcement."

(2) No person shall park or leave any vehicle, whether attended or unattended, upon any officially designated parking area of Seattle College District VI without a valid parking permit. No vehicle shall be parked in any parking area without a permit for that area, except state-owned vehicles used by the college.

A valid permit is:

(a) An unexpired parking decal permit properly registered and displayed in accordance with instructions.

(b) An authorized temporary or visitor permit, displayed in accordance with the instructions on the permit.

(3) The permit issued shall be placed in an easily visible location according to the directions of the campus parking enforcement officer.

(4) Parking permits are not transferable.

(5) The college reserves the right to refuse the issuance of a parking permit.

(6) No vehicle shall be parked on Seattle College District VI properties, except in those areas set aside and designated as parking areas.

(7) No vehicle shall be parked so as to occupy any portion of more than one parking space or stall as designated within a parking area.

(8) Purchasers of Seattle College District VI parking permits may be required to park in specified areas as designated by the college or district parking enforcement personnel.

(9) The parking spaces available on the various Seattle College District VI sites shall be assigned to faculty, staff and students in such manner as to best effectuate the objectives of these regulations. Assignments of parking spaces shall be the responsibility of the campus parking enforcement personnel as directed by the president of the college or district to represent the interests of faculty, staff and students.

NEW SECTION

WAC 132F-116-045 Ticketing and enforcement of traffic and parking rules and regulations. (1) Parking violation tickets will be issued for the following violations:

- (a) Parking in wrong area, improperly, or blocking;
- (b) Parked in a "No Parking" zone;
- (c) Parked in a fire lane;
- (d) Failure to display valid parking permit;
- (e) Violations of traffic safety laws, such as speeding, reckless/negligent driving, failure to yield right of way, failure to stop at a stop sign, and driving the wrong way on a one-way alley or street;
- (f) Forged or stolen permit;
- (g) Parking in a handicap space with no valid handicap placard or license plate.

(2) Parking enforcement shall be applied consistently in a uniform manner across the district.

(3) The amount of each violation shall be set by the Seattle College District, and is as follows:

- (a) Parked in wrong area, improperly, or blocking: \$25
- (b) Parked in a "No Parking" zone: \$25

- (c) Parked in a fire lane: \$100
 - (d) Failure to display valid permit: \$30
 - (e) Violations of traffic safety laws: \$30
 - (f) Forged or stolen permit: \$100
 - (g) Parking in a handicap space without a handicap placard or plates: \$250
- (4) Employees who repeatedly violate traffic safety or parking rules may be subject to progressive discipline and/or permit revocation.

(5) Students who repeatedly violate traffic safety or parking rules may be subject to student conduct actions and/or permit revocation.

(6) All parking violation tickets must be paid, unless waived for extenuating circumstances, by the parking enforcement personnel at each campus. A record must be maintained of all waived parking/traffic violation tickets.

(7) Appeals to reverse or reduce parking violation tickets shall be done in person in the parking enforcement office at each campus in accordance with WAC 132F-108-050.

(8) Impounding: This action shall be at the discretion of the college or district parking enforcement regarding any infractions pursuant to these regulations. Impounding may be implemented by mechanical restraints to vehicles on district property or by towing to an approved impounding agency. Release from impound on district property will be made upon payment of an appropriate fee, as determined by the Seattle College District. When a vehicle immobilization device is used (so-called "boot"), the fee to have this removed will be one hundred dollars, in addition to any other fines or fees levied for the infraction.

(9) Towing companies and/or impounding agencies will be selected on the basis of criteria developed by the colleges and the district.

(10) Neither the college nor district nor its employees shall be liable for loss or damage of any kind resulting from impounding and storage.

(11) Any vehicle impounded on or from Seattle College District VI property, shall be at the owner's risk and expense.

(12) No vehicle other than college owned or leased vehicles shall be parked on District VI property for a period in excess of seventy-two hours, without prior approval from parking enforcement. Vehicles violating this regulation are subject to impounding at the owner's risk and expense.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-140 Permit revocations. (1) Parking permits are the property of the district and may be recalled for any of the following reasons:

- (a) When the purpose for which the permit was issued changes or no longer exists.
- (b) When a permit is used by an unregistered vehicle or by an unauthorized person.
- (c) Continued violations of parking regulations.
- (d) Counterfeiting or altering decals.

(2) Vehicles displaying (~~cancelled~~) cancelled permits will be subject to penalties indicated in (~~section 116-120 modified as WAC 132F-116-130~~) WAC 132F-116-040.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-150 Fees and fee payments. (1) The parking permit fees shall be established, as appropriate, by the district board of trustees. The fee structure shall be on file at individual college business offices and the district purchasing office.

(2) ~~((Method of payment. Annual permits — payroll deduction only. Students, hourly and irregular employees — cash in advance (minimum of one quarter):))~~ Students who are registered for six or more credits shall purchase parking at the student rate, even if the student is working as an employee of the college or district.

(3) The parking enforcement personnel for the district parking program shall ensure that the methods of payment for permits are the most convenient for faculty, staff, and students as possible; as technology advances, parking enforcement at each campus may review or revise these methods of payment.

(4) Fees collected from the sale of parking permits shall be used to help offset the expenses of the district's commute trip reduction program, to help maintain the parking facilities at each campus, and to assist with funding of the positions necessary to enforce these parking rules and regulations, and other purposes deemed appropriate.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-160 Reciprocity of parking privileges. (1) Employee and student parking permits issued at a specific campus or district location will be valid at all other Seattle College District VI parking areas, except that an employee having reserved space parking at their home location may not utilize reserved space parking at a secondary site.

(2) Student parking permits are not valid during the non-operating hours of each campus. Any vehicle that displays a student permit while parked on campus during the nonoperating hours of the campus may be subject to parking fines and/or impoundment.

AMENDATORY SECTION (Amending WSR 85-21-016, filed 10/7/85)

WAC 132F-116-170 Disabled parking. No vehicle shall park in a parking space designated for disabled persons without displaying a disabled license plate, card, or decal issued by the Washington state department of licensing (or from equivalent other jurisdictions in other states) that indicates that an occupant of the vehicle is disabled.

(1) Such vehicle must be used to transport the disabled person.

(2) Vehicles meeting these criteria will be allowed to park in the designated spaces upon payment of the standard ~~((nonreserved))~~ parking rate.

(3) The ~~((safety and security officer))~~ parking enforcement personnel of each campus and the district office shall make alternative parking available for short-term disabilities.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
132F-116-100	132F-116-035
132F-116-140	132F-116-055
132F-116-150	132F-116-065
132F-116-160	132F-116-075
132F-116-170	132F-116-085

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132F-116-030	Parking—Permits required.
WAC 132F-116-040	Authorizations for issuance of permits.
WAC 132F-116-050	Parking within designated spaces.
WAC 132F-116-060	Display of permits.
WAC 132F-116-070	Duplicate permits.
WAC 132F-116-080	Responsibility of person issued a permit.
WAC 132F-116-090	Exceptions from parking restrictions.
WAC 132F-116-110	Parking areas and permit designation.
WAC 132F-116-120	Allocation of parking space and priorities.
WAC 132F-116-130	Impounding—Illegal parking—Disabled vehicles.

WSR 17-21-081

PROPOSED RULES

SEATTLE COLLEGES

[Filed October 16, 2017, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-017.

Title of Rule and Other Identifying Information: Chapter 132F-168 WAC, Access to public records.

Hearing Location(s): On November 28, 2017, at 1:00-3:00 p.m., at Seattle Colleges, Siegal Center, 1500 Harvard Avenue, 1st Floor Boardroom, Seattle, WA 98122.

Date of Intended Adoption: December 14, 2017.

Submit Written Comments to: Jennie Chen, 1500 Harvard Avenue, Seattle, WA 98122-3803, email wacinput@seattlecolleges.edu, fax 206-934-3894, by November 28, 2017, 5 p.m.

Assistance for Persons with Disabilities: Contact Jennie Chen, phone 206-934-3873, email Wacinput@seattlecolleges.edu, by November 21, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Implements the state legislature's new Public Records Act requirement, effective July 23, 2017. Under the new requirements, the district will no longer be authorized to charge fifteen cents per page for public records requests. The updated language will explain procedures for payment.

Reasons Supporting Proposal: Proposed changes are in compliance with EHB 1595.

Statutory Authority for Adoption: RCW 42.56.100, 42.56.040 (1)(d), 42.56.120 (as amended by chapter 304, Laws of 2017).

Statute Being Implemented: RCW 42.56.100.

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

Name of Proponent: Seattle Colleges, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dave Blake, Siegal Center, 206-934-4136.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The district is not one of the enumerated agencies listed in RCW 34.05.328(5).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328.

Explanation of exemptions: Pursuant to RCW 34.05.328(5)(a)(i), this agency is not an agency mandated to comply with RCW 34.05.328. Further, the agency does not voluntarily make that section applicable to the adoption of this rule 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 this rule.

October 10, 2017
Shouan Pan
Chancellor

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

WAC 132F-168-060 Copying. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain black and white photocopies for ~~((fifteen))~~ eleven cents per page or colored photocopies for thirteen cents per page. The district reserves the right to use outside vendors for large projects when an outside vendor can provide copies quicker or for less cost. The requestor will be required to pay the cost charged by the vendor.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

The Seattle College District VI will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of scanning existing Seattle College District VI paper or other nonelectronic records is ~~((four))~~ six cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee. A statement of the factors and the manner used to determine this charge is available from the public records officer.

Calculating the actual costs of charges for uploading electronic files or attachments is unduly burdensome, because it is difficult to accurately calculate all costs directly incident to uploading those records. Instead of calculating the actual costs for uploading electronic files or attachments, the district charges five cents per each four electronic files or attachments uploaded to email, cloud-based data storage service, or other means of electronic delivery as set forth in RCW 42.56.120 (2)(b).

If the requestor asks that the electronic records be provided on CD or DVD, the requestor will be charged the cost of the CD or DVD. If the electronic records are too large to be emailed through the Seattle College District email system, they will be provided on CD or DVD, and the requestor will be charged accordingly.

(3) **Costs of mailing.** The Seattle College District VI may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the Seattle College District VI.

WSR 17-21-084
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)
[Filed October 17, 2017, 2:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-053.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding?

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax

360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-15-069 to align with recent changes in RCW 26.44.100 requiring the department to send unfounded finding letters to subjects via mail or email instead of certified mail, return receipt requested.

Other changes that are identified during this rule making may be incorporated to clarify language.

Reasons Supporting Proposal: To align with recent changes in legislation.

Statutory Authority for Adoption: RCW 26.44.100, 74.13.031, and chapter 26.44 RCW.

Statute Being Implemented: RCW 26.44.100.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stephanie Frazier, P.O. Box 45710, Olympia, WA 98504, 360-902-7922.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b)(iii). Rules adopted by reference without material change to ensure WAC are consistent with federal requirements and consistent with RCW 26.44.100. The rule content is dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 12, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-16-041, filed 7/28/15, effective 8/28/15)

WAC 388-15-069 How does CPS notify the alleged perpetrator of the finding? (1) CPS notifies the alleged perpetrator of the founded finding by sending the CPS finding notice via certified mail, return receipt requested, to the last known address. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(2) CPS notifies the alleged perpetrator of the unfounded finding by sending the CPS finding notice via mail, to the last known address, or email. CPS must make a reasonable, good faith effort to determine the last known address or location of the alleged perpetrator.

(3) When CA is actively working with the alleged perpetrator and the certified mail sent pursuant to subsection (1) of this section is returned, CA will attempt to personally serve the CPS founded findings letter to the alleged perpetrator.

WSR 17-21-085

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Children's Administration)

[Filed October 17, 2017, 2:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-16-168.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-25-0506 Who is eligible for extended foster care?, 388-25-0528 How does a youth agree to participate in the extended foster care program?, and 388-25-0534 If an extended foster care participant loses his or her eligibility before he or she turns nineteen, can he or she reapply for extended foster care?

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend these rules because the Washington state legislature modified RCW 74.13.031 to raise the age limit for youth to reenroll into the extended foster care (EFC) program. The age limit has been raised from nineteen years old to twenty-one years old.

Reasons Supporting Proposal: To align with recent changes in legislation.

Statutory Authority for Adoption: RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030.

Statute Being Implemented: RCW 13.34.145.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sherrie Flores, P.O. Box 45710, Olympia, WA 98504, 360-902-8332.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required under RCW 34.05.328 (5)(b)(iii). Rules adopted by reference without material change to ensure WAC are consistent with federal requirements. The rule content is dictated by statute.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 12, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-14-065, filed 6/30/16, effective 7/31/16)

WAC 388-25-0506 Who is eligible for extended foster care? (1) To be eligible for the extended foster care program, a youth, on his or her eighteenth birthday must be dependent under chapter 13.34 RCW, placed in foster care as defined in WAC 388-25-0508 by CA, and:

(a) Enrolled in school as described in WAC 388-25-0512 ~~((in a high school or high school equivalency program));~~

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

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

~~((f)))~~ (c) Participating in a program or activity designed to promote employment or remove barriers to employment as described in WAC 388-25-0515;

~~((e)))~~ (d) Engaged in employment for eighty hours or more per month; ((e)

~~((f)))~~ (e) Unable to engage in subsection (1)(a) through ((e)) (d) of this section due a documented medical condition((-)) as described in WAC 388-25-0519; or

~~((2) Have))~~ (f) Did not enroll in the extended foster care program and;

(i) Had their dependency dismissed on their eighteenth birthday ((as the youth did not meet any of the criteria found in subsections (1)(a) through (f) of this section, or did not agree to participate in the program and the youth));

(ii) Is requesting to ((participate)) enroll in the extended foster care program through a voluntary placement agreement (VPA) prior to reaching the age of nineteen((-); and

(iii) Meets one of the criteria found in subsections (1)(a) through (e) of this section.

(2) If the youth was in the extended foster care program but then unenrolled or lost their eligibility, the youth may reenroll in the extended foster care program through a VPA one time before the age of twenty-one. The youth must meet one of the criteria in subsections (1)(a) through ((f)) (e) when requesting to ((participate)) reenroll in the extended foster care program.

AMENDATORY SECTION (Amending WSR 16-06-044, filed 2/24/16, effective 3/26/16)

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

(a) Signing an extended foster care agreement; or

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

(2) An eligible nondependent youth who did not elect to participate in the program on their eighteenth birthday can agree to participate by:

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

(b) Establishing a nonminor dependency before reaching age nineteen if the department denied entry into the program.

(3) An eligible nondependent youth requesting to reenter the program may agree to participate by signing a VPA prior to reaching age twenty-one as long as the youth has not previously entered into a VPA for extended foster care services.

(4) In order to continue receiving extended foster care services after entering into a ~~((voluntary placement agreement))~~ VPA with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a ~~((voluntary placement agreement))~~ VPA.

AMENDATORY SECTION (Amending WSR 14-13-051, filed 6/12/14, effective 7/13/14)

WAC 388-25-0534 If an extended foster care participant loses his or her eligibility before he or she turns ((nineteen)) twenty-one, ((eand)) may he or she reapply for extended foster care? (1) Yes. If a youth was ~~((receiving))~~ receiving extended foster care ~~((services))~~ services and lost eligibility, he or she may reapply as long as the youth:

~~((1) The youth))~~ (a) Has not turned ((nineteen)) twenty-one; ((and

~~((2) The youth))~~ (b) Meets one of the conditions for eligibility in WAC ((388-25-0506)) 388-25-0506 (1)(a) through (e); and

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

(2) Youth may reenter the extended foster care program one time between the ages of eighteen to twenty-one.

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

WSR 17-21-088

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 17, 2017, 3:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-136.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-71-0105 What definitions apply to adult protective services?, as a result of a court order.

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than November 22, 2017.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., November 21, 2017.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by November 7, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-71-0105 to strike the term "willful" from the definitions list in order to comply with an order issued by the Division III Court of Appeals in *Crosswhite v. DSHS* that invalidated the current definition of "willful."

Reasons Supporting Proposal: See purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090.

Rule is necessary because of federal court decision, Division III Court of Appeals in *Crosswhite v. DSHS*.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carol Sloan, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2345.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not a significant legislative rule as defined in RCW 34.05.328 (5)(c).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 12, 2017
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-05-022, filed 2/8/16, effective 4/1/16)

WAC 388-71-0105 What definitions apply to adult protective services? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to adult protective services:

"**AL TSA**" means DSHS aging and long-term support administration.

"**Adult family home**" means a home or building licensed under chapter 70.128 RCW.

"**AL J**" means an administrative law judge, 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 DSHS employees or DSHS representatives.

"**APS**" means adult protective services.

"**Basic necessities of life**" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

"**BOA**" means the DSHS board of appeals. The board of appeals consists of lawyers who are members of the Washington State Bar Association. An ALJ's decision can be appealed to the board of appeals, allowing a level of review before an appeal to the court system may be considered.

"**DSHS**" means the department of social and health services.

"**Enhanced service facility**" means a home or building licensed under chapter 70.97 RCW.

"**Facility**" means a residence licensed as an assisted living facility under chapter 18.20 RCW, an adult family home under chapter 70.128 RCW, a nursing home under chapter 18.51 RCW, a soldier's home under chapter 72.36 RCW, a residential habilitation center under chapter 71A.20 RCW, an enhanced services facility under chapter 71.05 RCW, or any other facility or residential program licensed or certified by DSHS's aging and long-term support administration.

"**Final finding**" means a substantiated initial finding of abandonment, abuse, financial exploitation, or neglect that:

(1) Has been upheld through the administrative appeal described in WAC 388-71-01205 through 388-71-01280(☺); or

(2) Is not timely appealed to the office of administrative hearings. A final finding may be appealed to superior court and the court of appeals under the Administrative Procedure Act, chapter 34.05 RCW.

"**Intermediate care facility for individuals with intellectual disabilities (ICF/IID)**" means a facility certified under 42 C.F.R. Part 483, Subpart I.

"**Legal representative**" means a guardian appointed under chapter 11.88 RCW or an attorney-in-fact under chapter 11.94 RCW.

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

"**Nursing facility ((NF))**," "**NF**," or "**medicaid-certified nursing facility**" means a nursing home licensed under chapter 18.51 RCW, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the federal Social Security Act ((42 U.S.C. § 1396r)) (42 U.S.C. Sec. 1396r). All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds may also be certified to provide medicare skilled nursing facility services.

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

"**Person with a duty of care**" includes, but is not limited to, the following:

(1) A guardian appointed under chapter 11.88 RCW; ((☺))

(2) A person named in a durable power of attorney as the attorney-in-fact as defined under chapter 11.94 RCW((☺); or

(3) A person providing the basic necessities of life to a vulnerable adult where:

(a) The person is employed by or on behalf of the vulnerable adult; or

(b) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

"Personal aide" means the same as found in RCW 74.39.007.

"Self-directed care" means the same as found in RCW 74.39.007.

"Skilled nursing facility ((SNF)), "SNE," or "medicare-certified skilled nursing facility" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the federal Social Security Act (42 U.S.C. § 1395i-3).

"Substantiated initial finding" means a determination made by the department upon investigation of an allegation of abandonment, abuse, financial exploitation, neglect, or self-neglect that more likely than not occurred.

~~("Willful" means the nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause harm, injury or a negative outcome.)~~

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

WSR 17-21-094
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed October 18, 2017, 8:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-12-115 on June 7, 2017.

Title of Rule and Other Identifying Information: WAC 220-440-170 Payment for livestock damage and other domestic animals—Limitations and 220-440-180 Application for cash compensation for livestock damage or domestic animal—Procedure.

Hearing Location(s): On December 8-9, 2017, at 8:00 a.m., at the Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: January 19-20, 2018.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email wildthing@dfw.wa.gov, fax 360-902-2162, <https://www.surveymonkey.com/r/29ZPM7V>, by November 8, 2017.

Assistance for Persons with Disabilities: Contact Tami Lininger, phone 360-902-2267, TTY 800-833-6388, email tami.lininger@dfw.wa.gov, by December 1, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 220-440-170, the purpose of the proposal is to align WAC 220-440-170 with RCW 77.36.110, so that a livestock producer must

exhaust all available compensation from nonprofit organizations before receiving payment from the Washington department of fish and wildlife (WDFW). The anticipated effect is to improve consistency in the language between law and rule, and to provide a more streamlined process for assessing submitted claims.

WAC 220-440-180, the purpose of the proposal is to clarify that a livestock producer can use an independent assessor, or market sales receipts from their last sale or their next upcoming sale to estimate the value of their damaged livestock, and to align WAC 220-440-180 with the payment schedule in the wolf plan for confirmed/probable wolf depredations on grazing areas greater than/less than one hundred acres.

Reasons Supporting Proposal: WAC 220-440-170, makes rule consistent with state law and produces a more streamlined process for assessing submitted claims.

WAC 220-440-180, makes rule consistent with WDFW's wolf conservation and management plan and produce[s] a more streamlined process for assessing submitted claims.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.36.170, and 77.36.180.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.36.170, and 77.36.180.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 600 Capitol Way North, Olympia, WA 98501, 360-902-2515; and Enforcement: Steve Bear, 600 Capitol Way North, Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule proposal does not require a cost-benefit analysis.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

October 18, 2017
Scott Bird
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-170 Payment for livestock damage and other domestic animals—Limitations. Commercial livestock owners who have worked with the department to prevent depredation but continue to experience losses, or who experience unforeseen losses, may be eligible to file a damage claim and receive cash compensation. Cash compensation will only be provided to livestock owners by the department when specifically appropriated by the legislature or other funding entity. Damages payable under this section are limited to the lost or diminished value of livestock caused by

wild bears, cougars, or wolves and shall be paid only to the owner of the livestock, without assignment. Cash compensation for livestock losses from bears, cougars, and wolves shall not include damage to other real or personal property, including other vegetation or animals, consequential damages, or any other damages except veterinarian services may be eligible. However, livestock owners under written agreement with the department will be compensated consistent with their agreement which may extend beyond the limitations in this section. The department is authorized to pay the market value for the eligible livestock or guard dog lost(;) or the market value of indirect livestock losses as a result of harassment by wolves, including reduced weight gains for livestock, and no more than ten thousand dollars to the livestock owner per claim.

Claims for cash compensation will be denied when:

(1) Funds for livestock compensation have not been specifically appropriated by the legislature or other funding entity;

(2) The claim is for livestock other than sheep, cattle, or horses, when only state funds are available; or any domestic animals not allowed by the funding entity;

(3) The owner fails to provide the department with an approved checklist of the preventative and nonlethal means that have been employed, or the owner failed to comply with the terms and conditions of his or her agreement(s) with the department;

(4) The owner has accepted noncash compensation to offset livestock losses in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for livestock losses within a fiscal year;

(5) Damages to the livestock or other domestic animals claimed are covered by insurance or are eligible for payment from ~~((other entities))~~ nonprofit organizations. However, any portion of the damage not covered by ~~((others))~~ nonprofit organizations is eligible for filing a claim with the department;

(6) The owner fails to provide on-site access to the department or designee for inspection and investigation of alleged attack or to verify eligibility for claim;

(7) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within this chapter;

(8) No claim will be processed if the owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge; or

(9) The owner or designee has salvaged or rendered the carcass or allowed it to be scavenged without an investigation completed under the direction of the department.

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-440-180 Application for cash compensation for livestock damage or domestic animal—Procedure. Pursuant to this section, the department may distribute money specifically appropriated by the legislature or other funding entity to pay commercial livestock or guard dog losses caused by wild bear, cougar, or wolves in the amount of up to ten thousand dollars per claim unless, following an

appeal, the department is ordered to pay more (see RCW 77.36.130(2)). The department will develop claim procedures and application forms consistent with this section for cash compensation of commercial livestock or guard dog losses. Partnerships with other public and private organizations to assist with completion of applications, assessment of losses, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Claimant must notify the department within twenty-four hours of discovery of livestock or other domestic animal attack or as soon as feasible.

(2) Damage claim assessment of amount and value of ~~((domestic animal))~~ eligible livestock or guard dog loss is the primary responsibility of the claimant.

(3) Investigation of the loss and review and approval of the assessment will be conducted by the department:

(a) The claimant must provide access to department staff or designees to investigate the cause of death or injury to ~~((domestic animals))~~ eligible livestock or guard dogs and use reasonable measures to protect evidence at the depredation site.

(b) Federal officials may be responsible for the investigation when it is suspected that the attack was by a federally listed species.

(4) To be eligible a claimant must submit a written statement, electronic or hard copy, within thirty days of discovery of a loss to indicate his or her intent to file a claim.

(5) A complete~~((, written))~~ claim package must be submitted to the department within ninety days of a discovery of an attack on ~~((domestic animals or))~~ livestock or guard dogs to be eligible for compensation.

(6) A claim form declaration must be signed, affirming that the information provided is factual and truthful, per the certification set out in RCW 9A.72.085 before the department will process the claim.

(7) In addition to a completed claim form, a claimant must provide:

(a) Proof of legal ownership or contractual lease of claimed livestock.

(b) Records documenting the value of the ~~((domestic animal based on either market price or value at the time of loss))~~ livestock or guard dog depending upon the determination for cause of loss.

(c) Declaration signed under penalty of perjury indicating that the claimant is eligible for the claim, meets eligibility requirements listed under this chapter and in RCW 77.36.100, 77.36.110, and 77.36.120, and all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(d) A copy of any insurance policy covering loss claimed.

(e) Copies of applications for other sources of loss compensation and any payment or denial documentation.

(f) The department approved checklist of preventative measures that have been deployed, or documented compliance with the terms and conditions of the claimant's agreement with the department, or the director approved waiver.

Settlement of claims:

(8) Subject to funds appropriated to pay for ~~((domestic animal))~~ livestock or guard dog losses, undisputed claims will be paid up to ten thousand dollars.

(9) Valuation of the lost livestock;

(a) ~~((For losses caused by wolves, livestock))~~ The department may utilize the services of an independent certified appraiser to assist in the evaluation of livestock or guard dog claims.

(b) For losses caused by wolves, the compensation value for livestock or guard dogs will be based on the value at the time the animal would normally be sold at market or the cost to replace the animal, and based on comparable types and/or weight of livestock or guard dogs, such as comparable calves, steers, cows, ewes, and lambs; except bulls will be replaced based on the actual purchase price prorated on a four-year depreciation cycle minus salvage value. The market or replacement value will be determined by ~~((the market at the time the animals would normally be sold. Livestock will be valued based on the average weight of herd mates at the time of sale multiplied by the cash market price received and depredated cows or ewes will be replaced based on the value of a bred animal of the same age and type as the one lost. Bulls will be replaced using actual purchase price prorated based on a four year depreciation cycle minus salvage value.~~

~~((b))~~ an independent certified appraiser, the sales receipts from the most recent sale of comparable animals by the owner, or the sales receipts from the next sale of comparable animals by the owner.

(c) The payment amount for wolf depredations to livestock will be based on the following criteria:

(i) Where the livestock grazing site was greater than or equal to one hundred acres, there is a rebuttable presumption that the number of commercial livestock wolf depredations that are eligible for compensation is twice the number of wolf livestock depredations documented by the department, unless all remaining livestock are accounted for. On these grazing sites, the payment for each confirmed wolf depredation will be the full market value for two commercial livestock. The payment for each probable wolf depredation will be half the full market value for two commercial livestock. Payments will be reduced by half if all the remaining livestock are accounted for.

(ii) Where the livestock grazing site was less than one hundred acres, there is a rebuttable presumption that all the commercial livestock wolf depredations are discovered by the livestock owner. On these grazing sites, the payment for each confirmed wolf depredation will be the full market value for one commercial livestock. The payment for each probable wolf depredation will be half the full market value for one commercial livestock.

(d) For losses caused by bear or cougar, livestock value will be determined by the market value ~~((s))~~ for an animal of the same breed, sex, and average weight at the time the animal ~~((s are))~~ is lost.

~~((e) The department may utilize the services of a certified livestock appraiser to assist in the evaluation of livestock claims.))~~

(10) Claims for higher than normal livestock losses, reduced weight gains, or reduced pregnancy rates due to harassment of livestock caused by wolves must include:

(a) At least three consecutive years of records ~~((prior to))~~ preceding the year of the claim. Claims will be assessed for losses in excess of the ~~((previous))~~ preceding three-year running average;

(b) The losses must occur on large pastures or range land used for grazing, lambing, or calving where regular monitoring of livestock is impractical (and therefore discovery of carcasses infeasible) as determined by the department;

(c) Verification by the department that wolves are occupying the area;

(d) The losses cannot be reasonably explained by other causes;

(e) Compliance with the department's preventative measures checklist, or damage prevention cooperative agreement, or a waiver signed by the director.

(11) Compensation paid by the department combined with any other compensation may not exceed the total assessed value of the ~~((assessed))~~ loss.

(12) Upon completion of an evaluation, the department will notify the claimant of its decision to either deny the claim or make a settlement offer (order). The claimant has sixty days from the date received to accept ~~((the department's))~~, sign, and mail to the department the original offer for settlement of the claim. If the claimant wishes to appeal the offer, they must request an informal resolution or adjudicative proceeding as described in WAC 220-440-230. ~~((The acceptance must be in writing and the signed originals must be mailed in to the department.))~~ The appeal must be in writing and may be mailed or submitted by email. If no written acceptance or request for appeal is received within sixty days of receipt of the settlement offer, the offer is considered rejected and not subject to appeal.

(13) If the claimant accepts the department's offer, the department will ~~((send))~~ provide payment to the claimant within thirty days from receipt of the written acceptance document(s).

(14) The department will prioritize payment for livestock losses in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for livestock losses during the current fiscal year, the claim shall be held over until the following fiscal year when funds become available. As funding becomes available to the department under this section, RCW 77.36.170, or any other source, the department must pay claims in ~~((the chronologie))~~ chronological order. Claims that are carried over will take first priority and receive payment before any new claims are paid. The payment of a claim included on the list maintained by the department under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement.

WSR 17-21-111
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 18, 2017, 10:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-05-038.

Title of Rule and Other Identifying Information: WAC 314-20-001 Definitions, 314-20-015 Licensed brewers, 314-20-017 Brewery and microbrewery retail liquor licenses, 314-20-018 Farmer's market beer and wine sampling, 314-20-020 Beer labels, 314-20-030 Packages, 314-20-055 Microbrewery warehouse license, 314-20-090 Cash sales, 314-20-092 Microbrewery alternating proprietorships, 314-20-100 Beer suppliers and distributors, 314-20-110 Beer importers—Principal office, 314-20-120 Beer importers—Warehouses, 314-20-170 Holders of certificate of approval, 314-20-260 Consumer orders, internet sales and delivery for domestic brewery and microbrewery licensees, 314-24-001 Definitions, 314-24-003 Standards of identity for wine, 314-24-006 Substandard wines prohibited, 314-24-008 Application procedure for domestic wineries, 314-24-040 Wine labels—Federal COLA required, 314-24-060 Quality standards, 314-24-070 Domestic wineries, 314-24-080 Containers, 314-24-090 Wine labels, 314-24-100 Domestic wineries, 314-24-105 Application procedure—Wine distributor's or importer's license, 314-24-115 Wine importers—Requirements, 314-24-117 Wine certificate of approval, 314-24-120 Importation of foreign wine, 314-24-160 Domestic wineries—Retail sales of wine on winery premises, 314-24-161 Domestic wineries—Additional locations, 314-24-162 Domestic winery alternating proprietorships, 314-24-190 Wine suppliers and distributors, 314-24-220 Licensing and operation of a bonded wine warehouse, 314-24-260 Consumer orders, internet sales and delivery for domestic winery licensee, 314-24-265 Defining wine of a winery's own production, 314-28-030 What does a distillery license allow?, 314-28-050 What does a craft distillery license allow?, 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license?, 314-28-080 What if a distillery or craft distillery licensee fails to report or pay or reports or pays late?, 314-28-090 Distilleries or craft distilleries—Selling out-of-state, 314-28-100 Consumer orders, internet sales and delivery for distillery and craft distillery licensees, 314-28-210 Return of spirits by retailer, and 314-28-220 Bonded and nonbonded spirits warehouse.

Hearing Location(s): On November 29, 2017, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA.

Date of Intended Adoption: December 13, 2017.

Submit Written Comments to: Karen McCall, P.O. Box 43098, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by November 29, 2017.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1631, fax 360-664-9689, email rules@lcb.wa.gov, by November 29, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement nonretail liquor license legislation passed in the 2017 legislative session. As part of the liquor and canna-

bis board's ongoing rules review process, rules are being reviewed for relevance, clarity, and accuracy.

Reasons Supporting Proposal: Nonretail liquor licensees need to know the requirements for new licenses and legislation passed in the 2017 legislative session. Existing rules need to be reviewed for relevance, clarity, and accuracy.

Statutory Authority for Adoption: RCW 66.24.170, 66.24.640, 66.24.695, 66.08.030.

Statute Being Implemented: RCW 66.24.170, 66.24.640, 66.24.695.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are to implement 2017 legislation and the review of rules does not require any additional fees or reporting.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

October 18, 2017

Jane Rushford

Chair

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-20-001 Definitions. ~~((Per RCW 66.04-010(2), an "authorized representative" means a person who:~~

~~(1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;~~

~~(2) Has its business located in the United States outside of the state of Washington;~~

~~(3) Acquires ownership of beer that is produced anywhere outside Washington by a brewery who does not distribute those brands for transportation into and resale in the state of Washington;~~

~~(4) Is appointed by the brewery referenced in subsection (3) of this section as its authorized representative for marketing and selling its products within the United States or within~~

~~Washington state, in accordance with a written agreement between the authorized representative and the brewery.)) (1) The following terms are defined in RCW 66.04.010:~~

~~(a) Authorized representative;~~

~~(b) Beer;~~

~~(c) Beer distributor;~~

~~(d) Beer importer;~~

~~(e) Brewer or brewery;~~

~~(f) Domestic brewery;~~

~~(g) Flavored malt beverage;~~

~~(h) Malt beverage and strong beer; and~~

~~(i) Sale and sell.~~

~~(2) COA means certificate of approval.~~

~~(3) COLA means certificate of label approval issued by~~

~~TTB.~~

~~(4) Contract production is defined in RCW 66.24.244.~~

~~(5) Domestic brewery alternating proprietorship means two or more entities taking turns using the same space and equipment to produce beer.~~

~~(6) TTB means the Alcohol Tax and Trade Bureau: U.S. Code - Title 27 of the Code of Federal Regulations.~~

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-20-015 Licensed brewers—Retail sales of beer on brewery premises—Beer served without charge on premises—Spirit, beer and wine restaurant operation.

(1) A licensed brewer may sell:

(a) Beer of its own production at retail on the brewery premises;

(b) Beer produced by another microbrewery or a domestic brewery for on- and off-premises consumption from its premises as long as the other breweries brands do not exceed twenty-five percent of the microbrewery's on-tap offering of its own brands. Beer not of its own production must be purchased through normal distribution channels; and

(c) Cider produced by a domestic winery. Cider must be purchased through normal distribution channels.

(2) In selling beer and/or cider at retail, as provided in subsection (1) of this section, a brewer shall conduct such operation in conformity with the statutes and regulations applicable to holders of such beer and/or wine retailers' licenses. The brewer shall maintain records of such retail operation separate from other brewery records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, beer of a licensed brewer's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the licensed brewer.

(4) A licensed brewer or a lessee of a licensed brewer operating a spirit, beer and wine restaurant, licensed pursuant to RCW 66.28.010, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A brewer may serve its own beer and beer not of its own production without charge on the brewery premises, as authorized by RCW 66.28.040.

(6) No retail license or fee is required for the holder of a brewer's license to serve beer without charge on the brewery

premises as set forth in subsection (5) of this section. Before exercising this privilege, however, such brewer shall obtain approval of the proposed service area and facilities from the board. Such brewer shall maintain a separate record of all beer so served.

(7) A brewery is required to obtain the appropriate retail license to sell beer, wine, or spirits on the brewery premises that is not of its own production except as set forth in subsection (1) of this section pursuant to RCW 66.24.244.

(8) Licensed beer manufacturers and their employees may:

(a) Sample beer of their own manufacture for manufacturing, evaluating, or pricing product in areas where the public is not served so long as the licensee employee does not become apparently intoxicated; and

(b) The licensee or employee who is sampling for these purposes is not also engaged in serving alcohol to the public.

AMENDATORY SECTION (Amending WSR 15-01-001, filed 12/3/14, effective 1/3/15)

WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers. A brewery or microbrewery licensed under RCW 66.24.240 or 66.24.244 may hold up to two retail liquor licenses to operate a spirits, beer, and wine restaurant, a tavern, a beer and/or wine restaurant, or any combination thereof.

(1) Definitions. ~~((a))~~ For the purposes of this section, a "container" is a sealable receptacle, such as a carton, jug, growler or keg, and has no minimum holding requirement. A "keg" is a container holding four gallons or more beer.

~~((b) "Malt liquor" is a specific type of "beer" (as explained in RCW 66.04.010).~~

~~(c) "Beer" includes malt liquor and flavored malt beverages (as explained in RCW 66.04.010).))~~

(2) Applicable to retail licenses for spirits, beer, and wine restaurants, beer and/or wine restaurants, and taverns.

(a) A retail license is separate from a brewery or microbrewery license.

(b) All containers of beer must be sold from the retail premises.

(c) A retail location may be located on or off the brewery or microbrewery premises.

(3) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell containers of beer of its own production and cider as defined in RCW 66.24.210(6) without a kegs-to-go endorsement provided that it sells this beer and cider for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer, and filled at the tap at the time of sale.

(4) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell kegs of malt liquor of another brewery's or microbrewery's production provided that it:

(a) Sells this malt liquor for off-premises consumption only;

(b) Has a kegs-to-go endorsement; and

(c) Supplies the kegs.

(5) A tavern or beer and/or wine restaurant that is operated by a brewery or microbrewery and has an off-premises beer and wine retailer's privilege may:

(a) Sell kegs of malt liquor for ~~((either on-premises or))~~ off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery;

(b) Sell containers of beer for ~~((either on-premises or))~~ off-premises consumption provided that the customer supplies the container. The beer may be of the licensee's own production or the production of another brewery or microbrewery; and

(c) Sell containers of cider as defined in RCW 66.24.-210(6) for off-premises consumption in a sanitary container brought to the premises by the customer or provided by the licensee and filled at the tap at the time of sale, provided the licensee has a license to sell wine. The licensee must comply with federal regulations.

AMENDATORY SECTION (Amending WSR 14-03-084, filed 1/16/14, effective 2/16/14)

WAC 314-20-018 Farmer's market beer and wine sampling. (1) To conduct beer and wine tasting at a farmer's market, the following criteria must be met:

(a) The farmer's market must be authorized to allow breweries, microbreweries, and wineries to sell sealed bottled wine and/or beer at retail.

(b) The farmer's market must hold an endorsement to allow sampling of beer and wine or both.

(c) A brewery, microbrewery, or winery offering samples at a farmer's market must have an endorsement from the board to sell beer or wine of its own production at a farmer's market (see RCW 66.24.170, 66.24.240, and 66.24.244).

(d) No more than three breweries, microbreweries, or wineries combined may offer samples at a qualifying farmer's market per day.

(e) A brewery, microbrewery, or winery may advertise that it offers samples only at its designated booth, stall, or anywhere within the farmer's market.

(2) Samples of beer or wine may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of two ounces per customer per day.

(b) Beer and wine samples are to be conducted at the booth or stall of the brewery, microbrewery, or winery with a barrier at least forty-two inches in height, where licensees are able to observe and control customers participating in the samples. The barriers may be moveable (an example would be ropes and stanchions).

(c) A brewery, microbrewery, or winery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(d) Customers must remain in the designated sampling area while sampling beer or wine.

(e) Brewery, microbrewery, or winery employees serving beer or wine during sampling events must hold a valid MAST permit.

(f) The brewery, microbrewery, or winery is required to send a list of scheduled beer and wine samplings to the liquor

control board at MIWenforce@liq.wa.gov at the beginning of each month. The date for each beer and wine sampling must be included.

(g) The farmer's market is also required to send a list of scheduled beer and wine samplings to the liquor control board at MIWenforce@liq.wa.gov at the beginning of each month. The date for each beer and wine sampling, and the names of the brewery, microbrewery, and winery providing the samples must be included.

(h) The farmer's market is required to provide a sketch to the licensing division of the area where beer and wine samples will be conducted and to any adjacent food booths.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-20-020 Beer labels—Certificate of label approval required—Labels to be submitted. (1) Every bottle or can containing beer intended for sale in the state of Washington shall bear a label in compliance with RCW 66.28.120. No beer shall be imported or sold within the state of Washington until the licensed brewery, or certificate of approval holder, ~~((shall have obtained from the board a certificate of label approval for such beer.~~

~~((2))~~ ~~(2) A request for certificate of label approval must be submitted on a form prescribed by the board which is))~~ submitted to the board, one copy of the federal certificate of label approval for such beer, issued by the Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department.

~~((3))~~ ~~(2)~~ Any change in label or product which requires reissuance of federal certificate of label approval, must also be submitted to the board, in accordance with the foregoing provisions of this regulation.

~~((4))~~ ~~(3)~~ No label shall be used that is misleading.

~~((5))~~ ~~(4)~~ Every producer, importer, distributor of beer, or beer certificate of approval holder shall, upon request of the board or its authorized representative, furnish without cost to the board, samples of any brand of beer upon its premises for the purpose of analysis in order to determine whether the beer conforms to commercial standards.

~~((6))~~ ~~(5)~~ No label will be approved which is designed to be especially appealing to children or other persons under legal age to consume. Persons who appear to be under legal age to consume may be depicted on a label when, in the discretion of the board, the depiction is dignified and does not promote illegal consumption of liquor.

~~((7))~~ ~~(6)~~ For strong beer, the label must contain the beer's alcohol content, stated in terms of percentage of alcohol by volume. Per RCW 66.04.010, strong beer means any malt beverage that contains more than eight percent of alcohol by weight, which is approximately ten percent of alcohol by volume.

AMENDATORY SECTION (Amending WSR 04-24-097, filed 12/1/04, effective 1/1/05)

WAC 314-20-030 Packages—Classification. (1) No manufacturer, distributor, importer, or beer certificate of approval holder shall sell beer for use in the state of Washington in any packages or containers differing in sizes and case quantities from the manufacturer's original packages.

(2) Net contents—Packaged beer. Net contents shall be stated in a clearly legible manner on the label in fluid ounces or as follows:

(a) If less than 1 pint, in fluid ounces, or fractions of a pint;

(b) If 1 pint, 1 quart, or 1 gallon, the net contents shall be so stated;

(c) If more than 1 pint, but less than 1 quart, the net contents shall be stated in fractions of a quart, or in pints and fluid ounces;

(d) If more than 1 quart, but less than 1 gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints, and fluid ounces;

(e) If more than 1 gallon, the net contents shall be stated in gallons and fractions thereof;

(f) The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

(3) Container size limitations—Barrels. Whole barrels (31 gallons), 1/2 barrels (15.5 gallons), 1/4 barrels (7.75 gallons), 1/6 barrels (5.16 gallons). Packaged beer—Maximum capacity for individual containers, 170 fluid ounces(~~(= Provided, however, That)~~). The board may, in its discretion, authorize other container and/or barrel size packages which have been approved for marketing within the United States by the Bureau of Alcohol, Tobacco, and Firearms, United States Treasury Department: Provided further, That the board may, in its discretion, authorize a brewery with spirit, beer and wine restaurant privileges to dispense beer directly from conditioning tanks/vessels to the spirit, beer and wine restaurant area provided the taxes have been paid prior to dispensing.

(4) The net contents of individual containers shall be stated on the outside of any multicontainer package where the individual container label or bottle size is not visible to the consumer at the point of purchase.

(5) Gift packages. A beer importer or beer wholesaler may prepare and sell "gift packages" consisting of containers of beer differing in case quantities from the manufacturer's original case capacities provided the tax has been paid on the previously purchased beer in accordance with RCW 66.24.-290 and provided written approval by the board has been obtained.

AMENDATORY SECTION (Amending WSR 09-02-009, filed 12/29/08, effective 1/29/09)

WAC 314-20-055 Microbrewery warehouse license.

(1) A licensee holding a microbrewery license under RCW 66.24.244 and acting as a distributor of its own products may apply for a microbrewery warehouse license. There is no fee for this license.

(2) A microbrewery warehouse is a premises located off the microbrewery premises that is used for the storage of their own bulk beer, finished product, and distribution of the microbrewery's own products.

(3) There may be no retail sales from the microbrewery warehouse.

(4) Microbreweries may not share warehouse space.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-20-070 Claims for defective keg beer—Replacement of overaged packaged beer—Procedures.

(1) In the case of beer in barrels, beer which is not in salable condition due to defective beer or a defective container may be returned by the retailer to the beer distributor for a claim adjustment. The brewer or supplier may make a credit adjustment to the distributor for such claim;

(2) No claim adjustment shall be accepted unless the same shall be made by the retailer within ten days after the defect in the beer or container has been discovered;

(3) All documentary evidence relating to the claim shall be preserved by the retailer, beer distributor, brewer, or beer importer for ~~((two))~~ three years after the date of the claim;

(4) No brewer, beer distributor, or beer importer shall allow, or shall any retailer make claim for adjustment for defective keg beer unless the container or the beer is in fact defective;

(5) In the case of package beer, other than beer in barrels, beer which is not in a salable condition or overaged may be returned by a retail licensee to the beer distributor from whom the beer was purchased, provided it is immediately replaced by the beer distributor with an identical quantity, type and brand of beer(~~(= Provided further, That)~~). If the brand of beer is not presently in the beer distributor's stock and is not available to the distributor in the immediate future, a cash refund may be made to the retail licensee;

(6) Beer different from that ordered which has been delivered in error to a retail licensee may be returned to a beer distributor and either replaced with that beer which was ordered or a cash refund may be made: Provided, That the error in delivery shall be discovered and corrected within eight days of the date the delivery was made;

(7) Distributors who replace unsalable or overaged packaged beer as provided in subsection (5) of this section, shall maintain complete records of all such transactions, with such records to be readily available for inspection by authorized employees of the board;

(8) Salable or unsalable beer may be returned by a retail licensee or by a governmental agency who has seized the same to the beer distributor selling such beer in the event the retailer goes out of the business of selling beer at retail, and in such case a cash refund may be made upon return of the beer, provided that consent of the board is first had and obtained;

(9) ~~((Except as provided herein;))~~ No other adjustment, by way of cash refund or otherwise, shall be made by the beer distributor, brewer or beer importer.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-20-090 Cash sales. No beer distributor nor brewer or beer importer holding a beer distributor's license shall sell or deliver beer to any retailer except for cash paid at the time of the delivery ~~((thereof: Provided, That))~~. Cash may

be paid prior to the delivery of beer sold to any retailer. Failure by licensees to keep accurate accounting records which result in the extension of credit, in violation of RCW 66.28-010 through the use of a prior cash deposit which is overextended may result in administrative action being taken against the liquor license.

NEW SECTION

WAC 314-20-092 Microbrewery alternating proprietorships. (1) Microbrewery alternating proprietorship - An alternating proprietorship arrangement consists of two or more entities taking turns using the same space and equipment to produce beer.

(a) The existing microbrewery and the new microbrewery proprietorships are referred to as "hosts" and "tenants," respectively.

(i) The host agrees to rent space and equipment to a new tenant. The agreement allows the host microbrewery to use excess capacity and give new tenants an opportunity to begin production on a small scale without investing in equipment.

(ii) All production by tenants is on the microbrewery premises and may not enter into a production contract with any brewery or microbrewery.

(b) Two or more microbreweries may establish independently operated microbrewery premises, mutually agreeing to alternate the use of space and equipment.

(i) No proprietorship functions as a "host" to others because each has agreed to share responsibility equally.

(ii) All production is on the microbrewery premises.

(iii) May enter into contractual production as a contractee under WAC 314-20-095.

(c) Alternating proprietorships must be approved by the board's licensing division through an application and approval process and must meet TTB requirements.

(d) A microbrewery premises may not be used by or shared with any other party unless the necessary alternating proprietorship applications have been approved by the board's licensing division.

A microbrewery may be approved to alternate with a domestic winery if they are owned by the same licensed entity.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-20-100 Beer suppliers and distributors. RCW 66.28.180 requires beer distributors and suppliers to maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions((—))**—For the purposes of this chapter:

(a) A "price list" means a declaration of the prices at which any and all brands of beer and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each manufacturer functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of beer sold by the supplier or distributor shall be available to retailers within the state.

(b) A "beer supplier" means a microbrewery, domestic brewery, certificate of approval holder, beer importer, beer distributor acting as the first United States importer, or a distributor selling beer to another distributor.

(c) A "beer distributor" means a distributor selling to a retailer, a domestic brewery acting as a distributor, a microbrewery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling beer of its own production to a retailer.

(d) Third-party delivery is prohibited.

(2) **Products and price lists((—))**—If a beer supplier or distributor lists selected items on which prices are temporarily reduced, these prices must clearly reflect all items and the selling price. All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

(3) **Distributor changes((—))**

(a) The following guidelines apply when a beer supplier makes a distributor change outside of the regular distributor appointment timelines. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

(b) A beer supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Price lists for new distributors((—))**—When the board issues a new beer distributor license, the licensee must have a price list available.

(5) **Accommodation sales((—))**—The provisions of this rule do not apply when a beer distributor makes an accommodation sale to another beer distributor and this sale is made at a selling price that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending Rule 50, filed 6/13/63)

WAC 314-20-110 Beer importers—Principal office. Each beer importer shall keep the board informed at all times of the location of the principal office required by section 23-G, subdivision (2) of the Washington State Liquor Act (RCW 66.24.260) and shall, not less than two days prior thereto notify the board in writing ((or by telegraph)) of any change in the location of such office.

NEW SECTION

WAC 314-20-260 Consumer orders, internet sales, and delivery for domestic brewery and microbrewery licensees. (1) A domestic brewery and microbrewery licensee may accept orders for beer from, and deliver beer to, customers.

(a) Beer shall not be for resale.

(b) Beer must come directly from a licensed domestic brewery or microbrewery possession.

(c) Beer may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(2) Sales and payment.

(a) Only a domestic brewery or microbrewery licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a domestic brewery or microbrewery licensee, except for transmittal of payment through a third-party service. The use of internet or mobile application for retail customers to purchase alcohol in Washington state is allowed under the following conditions:

(i) The internet sale will be made by the domestic brewery or microbrewery;

(ii) The payment for the sale will be processed by the domestic brewery or microbrewery; and

(iii) The domestic brewery or microbrewery pays the owner of the internet or mobile application a service fee.

(b) All orders and payments shall be fully processed before beer transfers ownership or, in the case of delivery, leaves a licensed domestic brewery's or microbrewery's possession.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account.

(d) Internet. To sell wine via the internet, a domestic brewery or microbrewery applicant must request internet sales privileges from the board prior to beginning internet sales.

(3) Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(4) Beer may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(5) Age requirement.

(a) Under chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(6) Delivery of liquor is prohibited to any person who shows signs of intoxication.

(7) Beer must be sold in original containers.

(8) Packages delivered by a third party must have language stating that:

(a) The package contains liquor;

(b) The recipient must be twenty-one years of age or older; and

(c) Delivery to intoxicated persons is prohibited.

(9) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(a) Name of the purchaser;

(b) Name of the person who accepts delivery;

(c) Street addresses of the purchaser and the delivery location; and

(d) Time and date of purchase and delivery.

(i) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(ii) A sales record does not have to include the name of the delivery person, but it is encouraged.

(10) When selling over the internet, all web site pages associated with the sale of liquor must display the domestic brewery or microbrewery licensee's registered trade name.

(11) A domestic brewery or microbrewery licensee shall be accountable for all deliveries of liquor made on its behalf.

(12) The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-20-120 Beer importers—Warehouses.

WAC 314-20-170 Holders of certificates of approval.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-24-001 Definitions. ~~((Per RCW 66.04-010(2), an "authorized representative" means a person who:~~

~~(1) Is required to have a federal basic permit issued by the alcohol and tobacco tax and trade bureau;~~

~~(2) Has its business located in the United States outside of the state of Washington;~~

~~(3) Acquires ownership of wine that is produced anywhere outside Washington by a winery which does not distribute those brands for transportation into and resale in the state of Washington;~~

~~(4) Is appointed by the winery referenced in subsection (3) of this section as its authorized representative for marketing and selling its products within the United States or within Washington state, in accordance with a written agreement between the authorized representative and the winery.)) (1)~~

The following terms are defined in RCW 66.04.010:

(a) Authorized representative;

(b) Domestic winery;

(c) Manufacturer;

(d) Package;

(e) Sale and sell;

(f) Wine;

(g) Wine distributor;

(h) Wine importer; and

(i) Winery.

(2) COA means certificate of approval.

(3) COLA means certificate of label approval.

(4) Custom crush - A custom crush arrangement involves an agreement or formal contract where one domestic winery (customer) pays another domestic winery (producer)

to produce wine to order. (It is not an alternating proprietorship arrangement.)

(5) Domestic winery alternating proprietorship - Two or more entities taking turns using the same space and equipment to produce wine.

(6) TTB means the Alcohol and Tax and Trade Bureau, U.S. Code - Title 27 of the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 85-19-030, filed 9/12/85)

WAC 314-24-003 Standards of identity for wine.

~~((H))~~ Application of standards. The standards of identity for ~~((the several))~~ all classes and types of wine shall meet the standards set forth ~~((herein shall be))~~ by TTB and is applicable to all wines produced, imported, bottled, offered for sale, or sold within this state for beverage use or any other purpose, except as hereinafter prescribed. The standards herein established are minimum standards for all wine~~((s of the several))~~ classes and types defined.

~~((2))~~ Standards of identity. The several classes and types of wine set forth herein shall be as follows:

(a) Wine (or grape wine). "Wine" is the product of the normal alcoholic fermentation of the juice of sound, ripe grapes (including pure condensed must), with or without added grape brandy or other spirits derived from grapes or grape products, and containing not to exceed 24 percent alcohol by volume, but without any other addition or abstraction whatsoever except such as may occur in normal cellar treatment. Provided, That the product may be ameliorated before, during or after fermentation by the use of pure dry sugar, a combination of water and pure dry sugar, liquid sugar, invert sugar syrup, grape juice or concentrated must, but only in accordance with federal regulations 27 C.F.R. part 240, and the total solids of the wine shall in no case exceed 21 percent by weight. The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be, for red table wine, more than 0.14 gram, and for all other wine, more than 0.12 gram in both cases per 100 cubic centimeters (20 degrees C.). The maximum sulphur dioxide content of any wine shall not be greater than 350 parts per million of total sulphur dioxide or sulphites expressed as sulphur dioxide.

Pure condensed must. "Pure condensed must" means the dehydrated juice or must of sound, ripe grapes, or other fruit or agricultural products, concentrated to not more than 80° Brix, the composition thereof remaining unaltered except for removal of water; the term "restored pure condensed must" means pure condensed must to which has been added an amount of water not exceeding the amount removed in the dehydration process; and the term "sugar" means pure cane, beet, or dextrose sugar in dry form containing, respectively, not less than 95 percent of actual sugar calculated on a dry basis.

(b) Natural wine is the product of the juice of sound, ripe grapes, or the product of the juice of sound ripe fruit or berries other than grapes, produced in accordance with section 5381, I.R.C., and federal regulations 27 C.F.R. part 240, as applicable.

(c) Red and white wine. Red wine is wine which contains the red coloring matter of the skins, juice, or pulp of grapes;

pink, amber or rose wine is wine which contains partial red coloring of the skins, juice, or pulp of grapes; and white wine is wine which does not contain the red coloring matter of the skins, juice, or pulp of grapes.

(d) Table wine (including light wine, light grape wine, light red wine, light white wine, and natural wine) is wine containing not to exceed 14 percent alcohol by volume. The maximum Balling or Brix saccharometer test for any table wine shall not be more than 14 percent (at 20 degrees C. using a saccharometer calibrated at this temperature) when the test is made in the presence of the alcoholic content provided herein.

~~(e) Dessert wine (including appetizer wine) is wine containing more than 14 percent alcohol by volume, and not to exceed 24 percent alcohol by volume. Angelica, madeira, malaga, marsala, muscatel, port, white port, sherry, and tokay are types of dessert wine containing added grape brandy or other spirits derived from grapes or grape products, possessing the taste, aroma and other characteristics generally attributed to these products, and having an alcoholic content of not less than 17 percent by volume in the case of sherry, and not less than 18 percent in the case of all other types named in this paragraph.~~

~~(f) Aperitif wine is grape wine, containing added grape brandy or other spirits derived from grapes or grape products and having an alcoholic content of not less than 15 percent by volume flavored with herbs and other natural aromatic flavoring materials and possessing the taste, aroma and other characteristics generally attributed to wine of this class.~~

~~(g) Vermouth is a type of aperitif wine made from grape wine and possessing the taste, aroma and other characteristics generally attributed to vermouth.~~

(h) The term vintage wine means a wine produced wholly from (i) grapes gathered and (ii) the juice therefrom fermented, in the same calendar year and in the same viticultural area (e.g., county, state, department, province, or equivalent geographic area, or subdivision thereof), as identified on the label of such wine.

(i) Sacramental wine. Wine used solely for sacramental purposes may possess such alcoholic content not exceeding 24 percent by volume as required by ecclesiastical codes.

(j) Sparkling grape wine (including sparkling wine, sparkling red wine, and sparkling white wine) is grape wine made effervescent with carbon dioxide resulting solely from the fermentation of the wine within a closed container, tank or bottle.

(k) Champagne is a type of sparkling light white wine which derives its effervescence solely from the secondary fermentation of the wine within glass containers of not greater than one gallon capacity, and which possesses the taste, aroma, and other characteristics attributed to champagne as made in the Champagne District of France.

(l) A sparkling light wine having the taste, aroma, and characteristics generally attributed to champagne but not otherwise conforming to the standard for champagne may, in addition to but not in lieu of the class designation sparkling wine, be further designated as champagne style, or champagne type or American (or New York state, California, etc.) champagne—bulk process; all the words in such further designation shall appear in lettering of substantially the same

size and such lettering shall not be substantially larger than the words "sparkling wine."

(m) Pink (or rose) champagne is a type of sparkling pink wine otherwise conforming to the definition of champagne, and shall be labeled in the same manner as champagne except that the designation pink (or rose) champagne shall be used in lieu of the designation champagne.

(n) Sparkling burgundy and sparkling moselle are types of sparkling wine possessing the taste, aroma and characteristics attributed to these products.

(o) Carbonated wine (including carbonated grape wine, carbonated red wine, carbonated pink (or rose) wine and carbonated white wine) is wine made effervescent with carbon dioxide other than that resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle.

(p) Fruit wine is wine produced by the normal alcoholic fermentation of the juice of sound, ripe fruit (other than grape), including pure condensed fruit must, with or without added fruit brandy or fruit spirits distilled from the same type of fruit or fruit products as the wine to which such fruit brandy or fruit spirits is added, and containing not to exceed 24 percent of alcohol by volume but without any other addition or abstraction whatsoever except such as may occur in normal cellar treatment. Provided, That the product may be ameliorated before, during, or after fermentation by the addition of water, pure dry sugar, a combination of water and pure dry sugar, liquid sugar, invert sugar syrup and concentrated and unconcentrated juice of the same fruit, but, only in accordance with federal regulations and the total solids of the wine shall in no case exceed 21 percent by weight.

The maximum volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, shall not be for natural fruit wine, more than 0.14 gram, and for other fruit wine, more than 0.12 gram, per 100 cubic centimeters (20 degrees C.).

(q) Light fruit wine (including natural fruit wine) is fruit wine containing not to exceed 14 percent alcohol by volume.

(r) Fruit wine derived wholly (except for sugar, water, or added fruit brandy or fruit spirits) from one kind of fruit shall be designated by the word wine, qualified by the name of such fruit; e.g., peach wine, orange wine, blackberry wine, etc. Fruit wine not derived wholly from one kind of fruit shall be designated as fruit wine or berry wine, as the case may be, qualified by a truthful and adequate statement of composition appearing in direct conjunction therewith. Fruit wines derived wholly (except for sugar, water, or added fruit brandy or fruit spirits) from apples or pears may if desired be designated cider, and perry, respectively, and shall be so designated if lacking in vinous taste, aroma, and other characteristics. Fruit wine rendered effervescent by carbon dioxide resulting solely from the secondary fermentation of the wine within a closed container, tank, or bottle shall be further designated as sparkling, and fruit wine rendered effervescent by carbon dioxide otherwise derived shall be further designated as carbonated.

(s) Berry wine is fruit wine produced from berries.

(t) Citrus wine or citrus fruit wine is fruit wine produced from citrus.

(u) Wine from other agricultural products. Sake is wine produced from rice in accordance with the commonly accepted method of producing such product.

(v) Other agricultural wines (such as honey wine), the production or sale of which is not prohibited by these regulations, shall be made in accordance with the commonly accepted standards of such product.

(w) Specialty wine is wine not otherwise herein defined, produced in accordance with commercial standards for such wines. Such wines may bear a fanciful proprietary designation and shall be labeled with a truthful and adequate statement of composition or with any commonly accepted trade designation indicative of such composition.

(x) Specially sweetened natural wine (a wine such as Kosher wine) is wine produced in accordance with federal regulation 27 C.F.R. part 240.

(y) High fermentation wine is a grape or fruit wine made within the limitations of regulation (57)(2)(a) for grape wine, and regulation (57)(2)(p) for fruit wine, except that the alcohol content after complete fermentation or complete fermentation and sweetening is more than 14 percent and that wine spirits may not be added, produced in accordance with federal regulation 27 C.F.R. part 240.

(z) Special natural wine is a flavored wine made on bonded wine cellar premises from a base of natural wine, in conformity with federal regulation 27 C.F.R. part 240.

(3) Grape type designations. A name indicative of variety of grape may be employed as the type designation of a wine if the wine derives its predominate taste, aroma, and other characteristics, and at least 51 percent of its volume, from that variety of grape.

(4) Appellations of origin. A wine shall be entitled to an appellation of origin if:

(a) At least 75 percent of its volume is derived from both fruit or other agricultural products grown in the place or region indicated by such appellation; and

(b) It conforms to the requirements of the laws and regulations of such place or region governing the composition, method of production and designation of wines for consumption within such place or region of origin.

(5) Conformance to state standards required. Wines of any defined class or type labeled or advertised under appellation of origin such as Spanish, New York, Ohio, Finger Lakes, California, etc., shall meet the requirements of standards herein prescribed applicable to such wines and shall, in addition, contain the minimum percentage of alcohol and conform as to composition in all other respects with all standards of identity, quality and purity applicable to wines of such classes or types marketed for consumption in the place or region of origin.

For example, all grape wines bearing labels showing California as the origin of such wine, shall be derived one hundred percent from grapes grown and wine from such grapes fermented within the state of California, shall contain no sugar or material containing sugar, other than pure condensed grape must; and any type of grape dessert wine (except sherry) shall contain not less than 18 percent of alcohol by volume; any type of sherry shall contain not less than 17 percent alcohol by volume; except as hereinbefore provided. Wines subjected to cellar treatment outside the place

or region of origin, and blends of wine of the same origin, blended together outside the place or region of origin (if all the wines, in the blend have a common class, type, or other designation which is employed as the designation of the blend), shall be entitled to the same appellation of origin to which they would be entitled if such cellar treatment of blending took place within the place or region of origin.

~~(6) Grape type designations, generic, semi-generic and nongeneric designations of geographic significance, are subject to the same requirements as set forth under Title 27, Code of Federal Regulations, Part 4.)~~

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-006 Substandard wines prohibited.

Application of this regulation. The production, importation or sale of, wine, which fails to conform to the standards prescribed ~~((in regulation (57) hereof))~~ by TTB, or of any wine fermented from raisins, dried fruits, or dried berries, or of any imitation or substandard wine as hereinafter defined, is hereby prohibited.

(1) Imitation wine shall include:

(a) Any wine containing synthetic materials;

(b) Any wine made from a mixture of water with residues remaining after thorough pressing of grapes, fruit or other agricultural products;

(c) Any class or type of wine, the taste, aroma, color or other characteristics of which have been acquired in whole or in part by treatment with methods or materials of any kind, if the taste, aroma, color or other characteristics of normal wines of such class or type are acquired without such treatment; or

(d) Any wine made from "must" concentrated at any time to more than 80 degrees (Balling).

(2) Substandard wine shall include:

~~(a) ((Any wine having a volatile acidity in excess of the maximum prescribed therefor in these regulations;~~

~~(b) Any wine for which no maximum volatile acidity is prescribed in these regulations having a volatile acidity, calculated as acetic acid and exclusive of sulphur dioxide, in excess of 0.14 gram per 100 cubic centimeters (20 degrees C.);~~

~~(e))~~ Any wine for which a standard of identity is prescribed in these regulations which, through disease, decomposition, or otherwise, fails to have the composition, color, and clean vinous taste and aroma of normal wines conforming to such standard; or

~~((d))~~ (b) Wine of any class or type containing added water, or sugar and water solution, in excess of the quantities expressly authorized for standard wine made from the same kind or kinds of materials as prescribed ~~((in regulation (57)))~~ by TTB.

(3) Coined names:

(a) The sale in this state of wines, identified on labels or in advertisements by a type of brand designation which implies mixtures of wines for which standards of identity are established in these regulations, or which identifying type or brand designation resembles an established wine type name such as Angelica, Madeira, Muscatel, Port, White Port,

Sherry, Tokay, Sauterne, Claret, Burgundy, etc., is hereby prohibited.

(b) The sale in this state of wine or combinations of wine and other alcoholic beverages which contain on the label statements such as whiskey wine, rum and wine, gin and wine, beer and wine, etc., or simulations of such combinations, is hereby prohibited.

(4) Containers:

(a) The sale of wine in any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents, is hereby prohibited.

(b) The sale of wine in containers which have blown, branded or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, distributor, or bottler or any other person different from the person whose name is required to appear on the brand label, is hereby prohibited.

NEW SECTION

WAC 314-24-008 Application procedure for domestic wineries. (1) There shall be a license for domestic wineries pursuant to RCW 66.24.170. Applications for a domestic winery shall be accompanied by information the board may request including, but not limited to:

(a) A floor plan showing the complete winery premises, including the production, storage, public tasting areas, office, and other spaces.

(b) A written description of the proposed method of production with appropriate documentation indicating the winery will be producing wine on the licensed premises.

(2) The domestic winery shall be physically separated from any other use as prescribed by the board.

(3) Provide the board with a copy of an approved producer/blender TTB permit.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-24-040 Wine labels—Federal certificate of label approval required—Labels to be submitted. (1) No wine shall be imported or sold within the state of Washington until the certificate of approval holder, or domestic winery, or United States importer of foreign wine, shall have submitted to the board:

(a) The federal certificate of label approval for such wine which has been issued by the ~~((Tax and Trade Bureau, U.S. Treasury Department))~~ TTB; and

(b) One label of the brand and type for which tracking is requested for wines under seven percent alcohol by volume.

(2) Any change in label or product which requires reissuance of federal approval under the ~~((provisions of 27 C.F.R. Part 4))~~ TTB, must also be submitted to the board in accordance with the foregoing provisions of this regulation.

(3) Every producer, importer, bottler, distributor, or wine certificate of approval holder shall, upon request of the board or its authorized representative, furnish without cost to the board, samples of any brand of wine upon its premises for the purpose of analysis in order to determine whether the wine

conforms to the quality standards set by the board in WAC 314-24-060 and conforms with commercial standards.

(4) No label shall be used that is misleading.

(5) No label shall be used that is designed to be appealing to children or other persons under legal age to consume. Persons who appear to be under legal age to consume may be depicted on a label when, in the discretion of the board, the depiction is dignified and does not promote illegal consumption of liquor.

(6) Wineries are not required to submit labels for tracking to the board for wine sold directly to Washington consumers under a direct shipper's permit. Wine labels may not be misleading and may not be designed to appeal especially to persons under the age of twenty-one.

AMENDATORY SECTION (Amending WSR 88-11-009, filed 5/10/88)

WAC 314-24-060 Quality standards. All wines of the types and classes hereinafter set forth sold in the state of Washington shall meet the ~~((following))~~ minimum requirements set by TTB.

~~((Acid content:~~

~~(1) Volatile acids:~~

- ~~(a) Red table wines Not over 0.14%, exclusive of sulfur dioxide, calculated as acetic acid.~~
- ~~(b) All other wines Not over 0.12%, exclusive of sulfur dioxide, calculated as acetic acid.~~
- ~~(c) Exception A higher volatile acidity level is permitted of 0.15 grams per 100 milliliters for white wine and 0.17 grams per 100 milliliters for red wine produced from unameliorated juice having a minimum solids content of 28 degrees Brix.~~

~~(2) Fixed acids:~~

- ~~(a) Grape wine:~~
 - ~~(i) Table wine Not less than 0.4% calculated as tartaric acid.~~
 - ~~(ii) Dessert wine Not less than 0.25% calculated as tartaric acid.~~
- ~~(b) Apple wine Not less than 0.15% calculated as malic acid.~~
- ~~(c) Fruit wine Not less than 0.5% calculated as citric acid.~~
- ~~(d) Berry wine Not less than 0.5% calculated as citric acid.~~

~~(3) Brix (balling):~~

- ~~(a) Port wine Minimum of 5.5 Brix at 20 degrees centigrade.~~
- ~~(b) White port wine Minimum of 5.5 Brix at 20 degrees centigrade.~~
- ~~(c) Muscatel wine Minimum of 5.5 Brix at 20 degrees centigrade.~~

- ~~(d) Tokay wine Minimum of 3.5 Brix at 20 degrees centigrade.~~
- ~~(e) Dry sherry wine Under 0.5 Brix at 20 degrees centigrade.~~
- ~~(f) Sherry wine Under 3 Brix at 20 degrees centigrade.~~
- ~~(g) Creme or sweet sherry wine Above 3 Brix at 20 degrees centigrade.~~

~~(4) Sulfur dioxide: Maximum of 350 parts per million total.~~

~~(5))~~ (1) Preservatives: No wines shall contain preservatives such as benzoic acid, salicylic acid or monochloroacetic acid, or their derivatives except that wines classified as specialty wine in accordance with WAC 314-24-003 ~~((2)(w))~~ may use benzoic acid or its derivatives if such use has been approved by the United States Food and Drug Administration.

~~((6))~~ (2) Stability: All wines shall be free from precipitates, colloidal matter, metallic casse, haze due to yeast, bacteria, tartrates, or other causes as determined by usual stability tests: Provided, however, That sediment may be allowed at the discretion of the board when it occurs in accordance with commercial standards commonly accepted by trade designations as normal and indicative of the wine's composition.

AMENDATORY SECTION (Amending WSR 14-06-109, filed 3/5/14, effective 4/5/14)

WAC 314-24-070 Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington. (1) Domestic wineries may purchase and receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in RCW 66.24.140, or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's fiscal year, and are subject to renewal at that time upon written request and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirits addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall make and file with the board, not later than the tenth day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1) of this section, and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced and bottled in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity, a licensed wine distributor or bonded wine warehouse.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery, a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor control board.

(e) A domestic winery, a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must keep on file for audit purposes clear source records (shipping documents, etc.) with reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-080 Containers—Sizes and types permitted. (1) All wine sold for consumption in the state shall be sold in packages or container sizes approved by the (~~Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department~~) TTB for marketing within the United States. A copy of the federal certificate of label approval must be submitted with each such request for authorization.

(2) No domestic winery or wine distributor, or wine importer shall adopt or use any packages for wine differing in sizes and case capacities from: Manufacturer's original full cases. The board may, in its discretion, authorize other container and/or keg size packages it deems appropriate.

(3) Wine referred to in subsections (1) and (2) of this regulation may also be packaged and sold in metric standards of fill and in case sizes as are established in 27 Code of Federal Regulations (~~, to wit: 3 liters (101 fl. oz.) 4 bottles per case; 1.5 liters (50.7 fl. oz.) 6 bottles p/c; one liter (33.8 fl. oz.) 12 bottles p/c; 750 milliliters (25.4 fl. oz.) 12 bottles p/c; 375 milliliters (12.7 fl. oz.) 24 bottles p/c; 187 milliliters (6.3 fl. oz.) 48 bottles p/c; 100 milliliters (3.4 fl. oz.) 60 bottles p/c~~).

Wine may be bottled or packed in containers of four liters or larger if the containers are filled and labeled in quantities of even liters.

(4) Wine imported from foreign countries may be packaged and container sizes approved by the (~~Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department~~) TTB for marketing within the United States. A copy of the federal certificate of label approval must be submitted with each such request for authorization.

(5) For taxing purposes and in all reports to the board, the (~~above~~) approved enumerated designations of package sizes, and no others, shall be used.

AMENDATORY SECTION (Amending WSR 87-21-036, filed 10/13/87)

WAC 314-24-090 Wine labels. (1) Every package or container of wine intended for sale within the state of Washington shall bear a label in compliance with RCW 66.28.110. Such label shall show:

(a) The brand name of the wine.

(b) Class, type or other designation.

(c) The name and address of the bottler or packager, which shall be stated as follows "Bottled by" Where a bottler or packager has made not less than 75% of the wine in a particular package or container by crushing the grapes or other materials, fermenting the must and clarifying the resulting wine, there may be stated in lieu of the words "bottled by" the words "manufactured and bottled by" or "produced and bottled by." In addition to the name and address of the bottler or packager, but not in lieu thereof, there may be stated the name and address of the manufacturer or producer.

(d) The alcoholic content of the wine by volume, stated as provided in either (i) or (ii) of this subsection:

(i) "Alcohol % by volume."

(ii) "Alcohol % to % by volume."

(e) The net contents of the package or container: Provided, That the net contents need not be stated on any label if the net contents are displayed by having the same blown or branded in the package or container as the brand label, in letters or figures in such manner as to be plainly legible under ordinary circumstances, and such statement is not obscured in any manner in whole or in part.

(2) No label shall be used until after the same has been (~~submitted to, and has received a written approval of, the board (see WAC 314-24-040))~~ approved by TTB and submitted to the board. For labels not requiring federal COLA, a form prescribed by the board shall be completed and submitted to the board for approval.

(3) No label shall be used that is misleading.

AMENDATORY SECTION (Amending WSR 86-11-014, filed 5/13/86)

WAC 314-24-100 Domestic wineries—Responsibility for fruits used—Records. Every domestic winery shall keep proper records as required by (~~the Bureau of Alcohol, Tobacco and Firearms, United States Treasury Department~~) TTB, in a form approved by the board showing the place of origin and/or purchase of all fruits and fruit products used by such winery in the manufacture of wine, which records shall

be kept at the office of such winery for a minimum of three years and available at all times for inspection by the board.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-105 Application procedure—Wine distributor's or importer's license. Any person making application for a new wine distributor's or importer's license shall submit to the board, as a condition precedent to the board considering the application, such information as may be requested by the board to include a copy of an approved wholesaler permit issued by TTB, and shall additionally submit a written commitment from a manufacturer or importer that the product the applicant proposes to distribute is available to him should a license be issued.

The decision as to whether a license will or will not be issued in a particular case is, pursuant to RCW 66.24.010, a matter of board discretion. The submission of the above information and written commitment shall not be construed as creating a vested right in the applicant to have a license issued.

AMENDATORY SECTION (Amending Order 26, filed 8/14/73)

WAC 314-24-115 Wine importers—Requirements.

(1) Principal office: Each wine importer shall keep the board informed at all times of the location of the principal office required by the Washington State Liquor Act and shall, not less than ~~((two))~~ thirty days prior thereto notify the board in writing ~~((or by telegraph))~~ of any change in the location of such office.

(2) Warehouses: Wine importers maintaining warehouses at which wine imported by such importer is stored shall ~~((at all times keep))~~ have the location approved by the board ~~((advised of the location of such warehouses)).~~

(3) Certain duties: No wine importer shall import or transport or cause to be transported into the state of Washington any brand of wine manufactured within the United States but outside the state of Washington, unless such importer shall have first filed with the board a notice of his intention so to do, and shall have ascertained from the board that the winery manufacturing such wine has obtained from the Washington state liquor control board a certificate of approval as provided in the Washington State Liquor Act (section 10, chapter 21, Laws of 1969 ex. sess.).

AMENDATORY SECTION (Amending WSR 06-11-051, filed 5/11/06, effective 6/11/06)

WAC 314-24-117 Wine certificate of approval ((fee)).

(1) ~~((The fee for a wine certificate of approval license is \$200 per year.))~~ The certificate of approval holder must pay the ~~((\$200))~~ fee for each privilege as described below:

(a) Manufacturer of wine produced in the United States but outside of Washington state, shipping wine to licensed Washington wine distributors or importers.

(b) Authorized representative for wine produced in the United States but outside of Washington state, shipping wine to licensed Washington wine distributors or importers.

(c) Authorized representative for wine produced outside of the United States, shipping wine to licensed Washington wine distributors or importers.

(2) A certificate of approval holder under RCW 66.24.-206 (1)(a) may add an endorsement to the certificate of approval that allows the holder to ship wine of the holder's own production directly to licensed liquor retailers. The fee ~~((for this endorsement is \$100 and))~~ is in addition to the fee required for a certificate of approval license.

AMENDATORY SECTION (Amending WSR 12-24-091, filed 12/5/12, effective 1/5/13)

WAC 314-24-120 Importation of foreign wine—United States wineries—Reports—Records. (1) Foreign wine. Wine manufactured outside of the United States may be imported by a wine importer or distributor under the following conditions:

(a) The wine importer or distributor importing such wine must obtain label approval in accordance with WAC 314-24-040. Such wine shall be imported and delivered directly to either the warehouse of the importer or distributor or to some other warehouse previously designated by the importer or distributor and approved by the board.

(b) All matters pertaining to the importation, transportation, storage, keeping of records, and all other matters pertaining to the importation of wine manufactured outside the United States shall be subject at all times to such orders, rules and regulations as the board may from time to time prescribe, and the board reserves the right to make orders applicable to individual and particular cases in addition to general orders, rules and regulations applicable generally.

(2) Holders of certificate of approval—United States wineries, located outside of Washington state. Except as authorized in WAC 314-24-117, each winery holding a certificate of approval may ship wine to licensed wine importers and/or distributors only. ~~((As required by section 10, chapter 21, Laws of 1969 ex. sess., and))~~ By the written agreement embodied in the application for certificate of approval, each winery holding a certificate of approval shall file the report(s) required by WAC 314-19-015.

AMENDATORY SECTION (Amending WSR 15-01-001, filed 12/3/14, effective 1/3/15)

WAC 314-24-160 Domestic wineries—Retail sales of wine on winery premises—Wine served without charge on premises—Spirit, beer and wine restaurant operation.

(1) A domestic winery ~~((holding a proper retail license, pursuant to chapter 66.24 RCW.))~~ may sell wine of its own production at retail on the winery premises.

(2) In selling wine of its own production at retail on its premises as provided in subsection (1) of this regulation, a domestic winery shall conduct such operation in conformity with the statutes and regulations which apply to holders of such wine retailers' licenses. The winery shall maintain records of its retail operation separate from other winery operation records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, wine of a domestic winery's own production and/or liquor products other than wine of a licensee's

own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the domestic winery.

(4) A domestic winery or a lessee of a licensed domestic winery operating a spirit, beer and wine restaurant, licensed pursuant to RCW 66.28.295, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A domestic winery may serve its own wine and wine not of its own production without charge on the winery premises as authorized by RCW 66.28.295(2).

(6) No retail license or fee is required for the holder of a domestic winery license to serve wine without charge on the winery premises as set forth in subsection (5) of this regulation. Before exercising this privilege, however, such winery shall obtain approval of the proposed service area and facilities. Such winery shall maintain a separate record of all wine so served.

(7) A domestic winery may sell for off-premises consumption wine of its own production in kegs or sanitary containers brought to the premises by the purchaser or furnished by the licensee in compliance with WAC 314-24-006(4) and filled at the tap at the time of sale.

(8) A winery is required to obtain the appropriate retail license pursuant to chapter 66.24 RCW to sell beer, wine, or spirits on the winery premises that is not of its own production. The winery shall follow the appropriate rules for such retail licenses.

(9) Licensed wine manufacturers and their employees may: Sample wine of their own manufacture for manufacturing, evaluating, or pricing product in areas where the public is not served, so long as the licensee or employee does not become apparently intoxicated; and the licensee or employee is not also engaged in serving alcohol to the public.

AMENDATORY SECTION (Amending WSR 15-01-001, filed 12/3/14, effective 1/3/15)

WAC 314-24-161 Domestic winery—Additional locations for retail sales only. A licensee holding a domestic winery license under RCW 66.24.170 may apply for ~~((two))~~ four additional location licenses.

(1) Wine-related retail activities allowed at an additional location include:

(a) Serving of samples provided with or without charge to customers (must be wine of the winery's own production). Samples are subject to taxes under WAC 314-19-015 (4)(b);

(b) Selling wine of the winery's own production for either on-premises or off-premises consumption;

(c) Selling for off-premises consumption wine of its own production in kegs or sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled at the tap at the time of sale; and

(d) Renting space for public and private events, such as catered events (subject to all of the provisions of this section, to Title 66 RCW covering the "tied house" restrictions, and to RCW 66.24.320 and 66.24.420).

(2) A licensee may request approval for an outside designated area. For the purpose of this section, an "outside design-

ated area" means a specific area located on an outside track of land where alcohol consumption is allowed.

(a) An outside designated area must have prior written approval from the board's licensing division.

(b) The outside designated area shall be marked as such, and shall be enclosed in accordance with WAC 314-02-130(1).

(c) The outside designated area shall be on the licensed premises.

(3) Anyone involved in the selling or serving of wine, including the pouring of samples, at an additional location for on-premises consumption must obtain a Class 12 or Class 13 alcohol server permit.

(4) A winery additional location may hold a beer and wine restaurant license at the additional location premises under the following conditions:

(a) The licensee must apply for a beer and wine restaurant license with fees for the additional location:

(i) If a location is shared with multiple wineries not of the same entity, violations will be addressed per the requirements of RCW 66.24.170(4).

(ii) Where the location is shared with multiple wineries, the applicant will include in their application a list of other license holders at that location as well as a sketch illustrating the location of each licensee.

(iii) The licensee applying for the retail license must provide a letter from each winery sharing the additional location that acknowledges and accepts the conditions in (a)(i) of this subsection.

(b) The licensee must abide by all laws and rules of the retail license ~~((and~~

~~((no free samples are allowed on the retail portion of the premises))).~~

NEW SECTION

WAC 314-24-162 Domestic winery alternating proprietorships. (1) Domestic winery alternating proprietorship - An alternating proprietorship arrangement consists of two or more entities taking turns using the same space and equipment to produce wine.

(a) The existing domestic winery and new winery are sometimes informally referred to as "hosts" and "tenants" respectively.

(i) The host agrees to rent space and equipment to a new tenant. Such an agreement allows the host winery to use excess capacity and give the new tenant an opportunity to begin production on a small scale without investing in equipment.

(ii) All production by tenants is on the winery premises and may not enter into a crush agreement.

(b) In other situations, two or more domestic wineries may establish an independently operated bonded wine premises, mutually agreeing to alternate use of space and equipment.

(i) No proprietorship functions as a host to the others because each has agreed to share responsibility equally.

(ii) All production is on the winery premises.

(iii) May enter into a crush agreement as a producer.

(c) These arrangements must be approved by the WSLCB licensing through an application and approval process and must meet TTB requirements.

(d) The winery premises may not be used or shared with any other party unless the necessary alternating proprietorship application has been approved.

A domestic winery may be approved to alternate with a domestic brewery or microbrewery, if they are owned by the same licensed entity.

(2) The host and each tenant shall have separate designated areas for the storage of their product. Floor plans must be submitted and approved by the board at the time of application. Any changes must be preapproved by the board in writing.

(3) The host and each tenant may share a joint tasting area on the premises under the following conditions:

(a) Submit floor plans for approval showing the location of the tasting area on the licensed premises.

(b) Each licensee is responsible for their own tasting and sales.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-24-190 Wine suppliers and distributors.

(1) **Definitions** - For the purposes of this chapter:

(a) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

(b) A "wine distributor" means a distributor selling to a retailer, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) **Products** - All products must be made available to all retail licensees to the extent it is reasonably practical to do so.

(3) **Distributor changes:**

(a) The following guidelines apply when a wine supplier makes a distributor change (~~outside of the regular distributor appointment timelines~~). The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor (~~to be effective immediately~~).

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Accommodation sales** - The provisions of this rule do not apply when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending WSR 09-02-010, filed 12/29/08, effective 1/29/09)

WAC 314-24-220 Licensing and operation of bonded wine warehouses. (1) There shall be a license for bonded wine warehouses pursuant to RCW 66.24.185, and this type of license shall be known as a bonded wine warehouse licensee. Applications for a bonded wine warehouse license shall be on forms prescribed by the board and shall be accompanied by such information as the board may request including, but not limited to, a written description of the proposed method of shipping, receiving, inventory control, and security.

(2) The bonded wine warehouse shall be physically separated from any other use in such manner as prescribed by the board, and as a condition of license approval, the applicant must furnish the board appropriate documentation indicating the location of the bonded wine warehouse is properly zoned for the intended use.

(3) A bonded wine warehouse may provide storage for a domestic winery, for another bonded wine warehouse, and for a certificate of approval holder. The Washington wine tax provided in RCW 66.24.210 shall not be due until the wine is removed from bond and shipped to a licensed Washington wine distributor (~~or, pursuant to RCW 66.12.020, to the liquor control board who will be responsible to pay the tax based on their purchases~~).

(4) Every bonded wine warehouse licensee shall have on file and available for inspection records of all wine transactions, including receipts and shipments of wine and the total inventory on hand at the bonded warehouse for a period of three years.

(5) Removals of wine from a bonded wine warehouse may be made only for shipment:

(a) To a licensed independent Washington wine distributor;

(b) To another licensed bonded wine warehouse;

(c) ~~(to the liquor control board;~~

~~(d))~~ Out-of-state;

~~((e))~~ (d) For return to the producing winery;

~~((f))~~ (e) To a producing domestic winery licensee; or

~~((g))~~ (f) Directly to a consumer.

(i) For purposes of this section, "producing domestic winery licensee" means the licensed Washington winery that produced the wine and its licensed agents.

(ii) For purposes of this section, a "licensed agent" shall be an accredited representative, licensed pursuant to chapter 314-44 WAC, of only one producing domestic winery at the time of removal by such agent.

(6) A producing domestic winery licensee may take possession of wine from a bonded wine warehouse, after accepting an order therefor, and deliver the wine to a purchasing retail or special occasion licensee only by transporting the wine directly from the bonded wine warehouse to the licensed premises of the purchasing retail or special occasion licensee; provided, however, that in no event may a producing domestic winery licensee remove, in the aggregate, during any one calendar year, more than two thousand cases of wine for delivery directly to retail and special occasion licensees. Producing domestic winery licensees shall maintain records of removals and deliveries of wine from bonded

wine warehouses and shall file with the liquor ~~((control))~~ and cannabis board annually reports of the quantity of wine removed and delivered directly to retail and special occasion licensees. Invoicing shall be by the titleholder. The titleholder shall report shipments to, and returns from the bonded wine warehouse and sales to Washington wine distributors, and/or the liquor ~~((control))~~ and cannabis board on the twentieth day of the month following the month of shipment and/or sale on forms furnished by, or acceptable to, the board.

~~((6))~~ (7) At no time shall title to wine stored at the bonded wine warehouse pass to the operator of the bonded wine warehouse.

~~((7))~~ (8) "Storage and handling of bottled wine" as used in RCW 66.24.185(1) shall mean the storage and handling of wine packaged for sale at retail (i.e., other than in bulk form).

~~((8))~~ (9) Any winery contracting with a bonded wine warehouse for direct shipments to consumers must accept and process the orders and payments. This includes, but is not limited to, in-person, mail, telephone, and internet orders and payments. Only a winery licensee or a winery licensee's employees may accept and process such orders and payments. A contractor may not do so on behalf of a winery licensee.

~~((9))~~ (10) A bonded wine warehouse may not accept orders and payments from consumers for direct shipments.

NEW SECTION

WAC 314-24-260 Consumer orders, internet sales, and delivery for domestic winery licensees. (1) A domestic winery licensee may accept orders for wine from, and deliver wine to, customers.

(a) Wine shall not be for resale.

(b) Wine must come directly from a licensed domestic winery possession or bonded wine warehouse.

(c) Wine may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(2) Sales and payment.

(a) Only a domestic winery licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a domestic winery licensee, except for transmittal of payment through a third-party service. The use of internet or mobile application for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The internet sale will be made by the winery;

(ii) The payment for the sale will be processed by the winery; and

(iii) The winery pays the owner of the internet or mobile application a service fee.

(b) All orders and payments shall be fully processed before wine transfers ownership or, in the case of delivery, leaves a licensed domestic winery's possession.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account.

(d) Internet. To sell wine via the internet, a domestic winery applicant must request internet sales privileges from the board prior to beginning internet sales.

(3) Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(4) Wine may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(5) Age requirement.

(a) Under chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(6) Delivery of liquor is prohibited to any person who shows signs of intoxication.

(7) Wine must be sold in original containers.

(8) Packages delivered by a third party must have language stating that:

(a) The package contains liquor;

(b) The recipient must be twenty-one years of age or older; and

(c) Delivery to intoxicated persons is prohibited.

(9) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(a) Name of the purchaser;

(b) Name of the person who accepts delivery;

(c) Street addresses of the purchaser and the delivery location;

(d) Time and date of purchase and delivery; and

(e) A private carrier must obtain the signature of the person who receives liquor upon delivery.

A sales record does not have to include the name of the delivery person, but it is encouraged.

(10) When selling over the internet, all web site pages associated with the sale of liquor must display the domestic winery licensee's registered trade name.

(11) A domestic winery licensee shall be accountable for all deliveries of liquor made on its behalf.

(12) The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

NEW SECTION

WAC 314-24-265 Defining wine of a winery's own production. A domestic winery holding a valid license in both Washington and Oregon may market and distribute wine produced in Oregon utilizing their Washington winery license as the premises for transactions if the following conditions are met:

(1) The licensee must request approval from the WSLCB to market and retail their Oregon wine at their Washington winery premises. Approval will be granted based on the doc-

umentation that demonstrates compliance with this regulation.

(2) The licensee must demonstrate a valid Oregon winery license and that the underlying ownership of the Oregon winery license is identical to the Washington winery license.

(3) Both the Washington and Oregon wineries must manufacture wine within the same TTB authorized appellation. Only wine from cross border appellations will be approved.

(4) Oregon wine to be marketed and/or sold in Washington must have the appropriate taxes paid (RCW 66.24.210).

AMENDATORY SECTION (Amending WSR 15-16-049, filed 7/29/15, effective 8/29/15)

WAC 314-28-030 What does a distillery license allow? (1) A distillery license allows the licensee to:

(a) Sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington;

(b) Sell spirits of its own production for consumption off the premises. A distiller selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;

(c) Provide free or for a charge one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery((-)) under the following conditions:

(i) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.

(ii) The maximum ~~((total))~~ amount of alcohol per person per day is two ounces.

(iii) Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.

(d) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(2) Contract production is when one distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of a distillery license, or manufacturers' license including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as the Revised Code of Washington and the Washington Administrative Code allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(3) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(4) The contractor and contractee are required to obtain any federal approvals.

AMENDATORY SECTION (Amending WSR 15-16-049, filed 7/29/15, effective 8/29/15)

WAC 314-28-050 What does a craft distillery license allow? (1) A craft distillery license allows a licensee to:

(a) Produce one hundred fifty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A craft distiller may not sell liquor products of someone else's production;

(c) Sell spirits of its own production to a licensed spirits distributor;

(d) Sell spirits of its own production to a licensed spirits retailer in the state of Washington;

(e) Sell to out-of-state entities;

(f) Provide, free or for a charge, samples of spirits of its own production to persons on the distillery premises((-)) subject to the following conditions:

(i) ~~((Each sample must be one half ounce or less, with no more than two ounces of samples provided per person per day))~~ The maximum amount of alcohol per person per day is two ounces.

(ii) Samples may be altered with nonalcoholic mixers, mixers with alcohol of the distiller's own production, ice, and/or water.

(iii) Anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit.

(iv) Samples must be in compliance with RCW 66.28.-040;

(g) Provide samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

(h) Contract produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may add a spirits, beer, and wine restaurant license at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-28-070 What are the monthly reporting and payment requirements for a distillery and craft distillery license? (1) A distiller or craft distiller must submit monthly reports and payments to the board.

The required monthly reports must be:

(a) On a form furnished by the board;

(b) Filed every month, including months with no activity or payment due;

(c) Submitted, with payment due, to the board on or before the twentieth day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal

holiday, the filing must be postmarked by the U.S. postal service no later than the next postal business day; and

(d) Filed separately for each liquor license held.

(2) For reporting purposes, production is the distillation of spirits from mash, wort, wash or any other distilling material. After the production process is completed, a production gauge shall be made to establish the quantity and proof of the spirits produced. The designation as to the kind of spirits shall also be made at the time of the production gauge. A record of the production gauge shall be maintained by the distiller. The completion of the production process is when the product is packaged for distribution. Production quantities are reportable within thirty days of the completion of the production process.

(3) ~~((On sales on or after March 1, 2012,))~~ A distillery or craft distillery must pay ten percent of their gross spirits revenue to the board on sales to a licensee allowed to sell spirits for on- or off-premises consumption during the first ~~((two years))~~ twenty-seven months of licensure and five percent of their gross spirits revenues to the board in ~~((year three))~~ the twenty-eighth month and thereafter.

(a) ~~((On sales after June 1, 2012,))~~ A distillery or craft distillery must pay seventeen percent of their gross spirits revenue to the board on sales to customers for off-premises consumption.

(b) Payments must be submitted, with monthly reports, to the board on or before the twentieth day of each month, for the previous month. (For example, payment for a report listing transactions for the month of January is due by February 20th.) When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, payment must be postmarked by the U.S. postal service no later than the next postal business day.

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late? Failure of a distillery or craft distiller to submit its monthly reports and payment to the board as required ~~((in WAC 314-28-070(1)))~~ will be sufficient grounds for the board to suspend or revoke the liquor license.

Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.

AMENDATORY SECTION (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

WAC 314-28-090 Distilleries or craft distilleries—Selling out-of-state. What are the requirements for a craft distillery licensee to sell its spirits product outside the state of Washington?

(1) A distillery or craft distillery licensee shall include, in its monthly report to the board, information on the product it produces in-state and sells out-of-state. Information includes, but is not limited to, the amount of proof gallons sold, and for a craft distillery, the composition of raw materials used in production of the product.

(2) Product produced in-state and sold out-of-state counts toward a craft distillery licensee's ~~((sixty thousand))~~ one hundred fifty proof gallons per calendar year production limit ~~((see WAC 314-28-050))~~.

(3) Product produced in-state and sold out-of-state is subject to the fifty percent Washington grown raw materials requirement for a craft distillery.

(4) A distillery or craft distillery licensee is not subject to Washington state liquor taxes on any product the licensee sells out-of-state.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-28-100 Consumer orders, internet sales, and delivery for distillery and craft distillery licensees. A distillery or craft distillery licensee may accept orders for spirits from, and deliver spirits to, customers.

(1) **Resale.** Spirits shall not be for resale.

(2) **Stock location.** Spirits must come directly from a licensed distillery or craft distillery possession.

(3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a spirits distillery or craft distillery licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits distillery or craft distillery licensee, except for transmittal of payment through a third-party service. ~~((A third-party service may not solicit customer business on behalf of a spirits distillery or craft distillery licensee.~~

~~((b))~~ The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The internet sale will be made by the distillery;

(ii) The payment for the sale will be processed by the distillery; and

(iii) The distillery pays the owner of the internet or mobile application a service fee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's possession.

(c) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's or craft distillery's possession.

~~((e))~~ (d) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

~~((f))~~ (e) Internet. To sell spirits via the internet, a new spirits distillery or craft distillery license applicant must request internet sales privileges in his or her application. An

existing spirits distillery or craft distillery licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits distillery or craft distillery licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under chapter 66.44 RCW, any person under twenty-one years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person twenty-one years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in one hundred percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be twenty-one years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Web site requirements.** When selling over the internet, all web site pages associated with the sale of liquor must display the spirits distillery or craft distillery licensee's registered trade name.

(12) **Accountability.** A spirits distillery or craft distillery licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a

licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

NEW SECTION

WAC 314-28-210 Return of spirits by retailer—Replacement—Conditions. No spirits shall be returned by any retail licensee to any spirits distributor except as herein provided.

(1) Spirits which is not in a salable condition may be returned by a retail licensee to the spirits distributor from whom purchased, provided it is immediately replaced by the spirits distributor with an identical quantity, type and brand of spirits. If the brand of spirits is not presently in the spirits distributor's stock and is not available to the distributor in the immediate future, a cash refund may be made to the retail licensee upon the approval of the board first being obtained.

(a) Every spirits distributor shall maintain on the licensed premises for a period of three years complete records of all refunds and exchanges made under this section including an inventory of unsalable spirits returned to such distributor by any retail licensee.

(b) Such unsalable spirits which requires reconditioning or destruction shall be returned by the spirits distributor to the distillery or craft distillery which manufactured or produced the same, or to the importer who imported such spirits. When spirits which has been returned to a distiller or craft distiller by any person for reconditioning or destruction has been assembled at the distillery or craft distillery, a complete inventory in duplicate of unsalable spirits shall be filed with the board by the distillery or craft distillery with a request that inspection be made of the returned spirits before the reconditioning process or destruction is started. When spirits has been returned by the distributor to the importer who imported such spirits, a complete inventory of said spirits shall be filed in duplicate with enforcement by the importer with a request that inspection be made of the returned spirits before the spirits is destroyed or returned to the out-of-state manufacturer.

(c) Spirits which is not in a salable condition and has been returned to a distillery, craft distillery or importer by a distributor may be replaced by the supplier with an identical quantity, type, and brand of spirits. If the brand of spirits is not presently in the distillery, craft distillery, or importer's stock and is not available to the supplier in the immediate future, a cash refund or credit may be made to the distributor by the supplier. Credit extended for the return of product should be noted on a separate document from the original invoice. Except as provided herein, no other adjustment, by way of a cash refund or otherwise, shall be made by the distillery, craft distillery, or spirits distributor.

(2) Spirits may be returned by a retail licensee or by a governmental agency who has seized the same to the spirits distributor selling such spirits in the event the retailer goes out of the business of selling spirits at retail a cash refund may be made upon return of the spirits, provided that consent of the board is first had and obtained.

(3) Spirits different from that ordered which has been delivered in error to a retail licensee may be returned to a spirits distributor and either replaced with that spirits which

was ordered or a cash refund may be made upon the approval of the board first being obtained. The error in delivery shall be discovered and corrected within eight days of the date the delivery was made.

(4) A distributor may return salable spirits to a Washington distillery or craft distillery provided the distillery or craft distillery reimburses the distributor for the cost of the spirits.

NEW SECTION

WAC 314-28-220 Bonded and nonbonded spirits warehouse. (1) There shall be a license that allows the storage and handling of bonded bulk spirits and, to the extent allowed under federal law, bottled spirits and the storage of tax-paid spirits not in bond. The licensee is allowed to store spirits of a distillery, craft distillery or manufacturer.

(2) Spirits in bond (bulk) may be removed from a bonded spirits warehouse for the purpose of being:

(a) Exported from the state;

(b) Returned to a distillery or spirits warehouse licensed under this section; or

(c) Transferred to a distillery, spirits warehouse licensed under this section, or a licensed bottling or packaging facility.

(3) Bottled spirits that are being removed from a spirits warehouse licensed under this section tax-paid may be:

(a) Transferred back to the distillery that produced them;

(b) Shipped to a licensed Washington spirits distributor;

(c) Shipped to a licensed Washington spirits retailer;

(d) Exported from the state; or

(e) Removed for direct shipping to a consumer pursuant to RCW 66.20.410.

(4) Handling of bottled spirits that have been removed from bond tax-paid and that reside in the spirits warehouse includes:

(a) Packaging and repackaging services;

(b) Bottle labeling services;

(c) Creating baskets or variety packs that may or may not include nonspirits products; and

(d) Picking, packing, and shipping spirits orders on behalf of a licensed distillery direct to consumers in accordance with RCW 66.20.410.

A distillery contracting with the operator of a spirits warehouse licensed under this section for handling bottled spirits must comply with all applicable state and federal laws and is responsible for financial transactions in direct to consumer shipping activities.

(5) The license applicant must demonstrate:

(a) The right to have warehoused spirits under a valid federal permit held by the distiller, craft distillery, or manufacturer who maintains ownership and title to the spirits while they are in storage;

(b) The location is physically secure;

(c) Zoned for the intended use; and

(d) Physically separated from any other use.

(6) A licensee must be a sole proprietor, a partnership, a limited liability company, a corporation, a port authority, a city, a county, or any other public entity or subdivision of the state that elects to license a bonded spirits warehouse as an agricultural or economic development activity. One or more domestic distilleries or manufacturers may operate as a part-

nership, corporation, business co-op, cotenant, or agricultural co-op for the purpose of obtaining a bonded and nonbonded spirits warehouse license or storing spirits in the facility under a common management and oversight agreement free of charge or for a fee.

(7) The ownership and operation of a spirits warehouse facility licensed under this section may be by a person or entity other than those described in this section acting in a commercial warehouse management position under contract for such licensed persons or entities on their behalf.

(8) A licensee must designate clearly in its license application to the board the sections of the warehouse that are bonded and nonbonded with a physical separation between such spaces, be physically secure, zoned for the intended use, and physically separated from any other use.

(9) The proprietor of the warehouse must maintain a plan for tracking spirits being stored in the warehouse to ensure compliance with relevant bonding and tax obligations.

WSR 17-21-112

PROPOSED RULES

LIQUOR AND CANNABIS

BOARD

[Filed October 18, 2017, 10:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-15-051.

Title of Rule and Other Identifying Information: WAC 314-02-060 What is a caterer's endorsement?, 314-02-061 What is required for offsite storage of liquor under a caterer's endorsement?, 314-02-092 What is a combination spirits, beer, and wine license?, 314-02-103 What is a wine reseller endorsement?, 314-38-020 Permits—Fees established, and 314-38-110 Nonprofit wine auction permit.

Hearing Location(s): On November 29, 2017, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA.

Date of Intended Adoption: December 13, 2017.

Submit Written Comments to: Karen McCall, P.O. Box 43098, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by November 29, 2017.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1631, fax 360-664-9689, email rules@lcb.wa.gov, by November 29, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to implement 2017 liquor legislation.

Reasons Supporting Proposal: Licensees need to know the requirements for new licenses passed in the 2017 legislative session.

Statutory Authority for Adoption: RCW 66.24.010, 66.24.035, 66.24.330.

Statute Being Implemented: RCW 66.24.010, 66.24.035, 66.24.330.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are required to implement 2017 legislation.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

October 18, 2017
Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-060 What is a caterer's endorsement?

(1) A spirits, beer, and wine restaurant (~~and~~), a beer and/or wine restaurant, and a tavern applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at locations other than liquor licensed premises. See RCW 66.24.420(6) (~~and~~), 66.24.320(2), and 66.24.330 for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred fifty dollars.

AMENDATORY SECTION (Amending WSR 09-02-012, filed 12/29/08, effective 1/29/09)

WAC 314-02-061 What is required for offsite storage of liquor under a caterer's endorsement? A spirits, beer, and wine restaurant licensee with a caterer's endorsement, (~~or~~) a beer and/or wine restaurant licensee with a caterer's endorsement, or a tavern licensee with a caterer's endorsement, may store its alcohol at locations described in RCW 66.24.320, 66.24.330, and 66.24.420 that are not on the licensed premises if the following conditions are met:

(1) The licensee must display the approval letter for storing liquor at each location;

(2) Liquor storage must be within the event location where catering services for events are provided;

(3) If the location is one for which the licensee has an on-going contract or agreement to provide liquor service at catered events, the contract or agreement must include the following:

(a) Names of the parties;

(b) Location and address where on-going liquor catering services are provided;

(c) A sketch and description of the facility that includes where the liquor will be stored, how the liquor will be secured to ensure public safety, and the provisions that restrict access to the liquor storage area to the licensee and the licensee's employees; and

(d) Signatures of the parties.

(4) For locations owned or leased by the licensee and for which the licensee provides liquor service at catered events, the licensee must submit copies of documents that evidence the ownership or leasehold interest.

NEW SECTION

WAC 314-02-092 What is a combination spirits, beer, and wine license? (1) Per RCW 66.24.632, a combination spirits, beer, and wine license is a retail license that allows a licensee to sell beer and wine, including strong beer, at retail in bottles, cans, and original containers for off-premises consumption, and to:

(a) Sell spirits in original containers to consumers for off-premises consumption and to permit holders;

(b) Sell spirits in original containers to retailers licensed to sell spirits for consumption on the premises, for resale at their licensed premises according to the terms of their licenses. No single sale may exceed twenty-four liters; and

(c) Export spirits.

(2) A combination spirits, beer, and wine licensee that intends to sell to an on-premises retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the combination spirits, beer, and wine licensee plans to sell to an on-premises retailer.

(3) A sale by a combination spirits, beer, and wine licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a combination spirits, beer, and wine licensee must abide by RCW 66.24.630.

(4) A combination spirits, beer, and wine licensee must pay to the board seventeen percent of all spirits sales. (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The board may issue a combination spirits, beer, and wine license:

(a)(i) For premises comprising at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement; and

(ii) To applicants that the board determines will maintain appropriate systems for inventory management, employee training, employee supervision, and physical security of the product.

(b) For premises of a former contract liquor store; or

(c) To a holder of former state liquor store operating rights sold at auction.

(6) A spirits retail licensee may apply for a sampling endorsement to conduct spirits, beer, and wine sampling if they meet the following criteria:

- (a) Be a participant in the responsible vendor program;
- (b) Advertising:

(i) For combination spirits, beer, and wine retail licensees, advertising samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(ii) Advertising of sampling may be advertised but not state that sampling is free of charge.

(c) Samplings are to be conducted in the following manner:

(i) Samplings service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area;

(ii) The licensee must provide a sketch of the sampling area. Fixed or moveable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. The sketch is to be included with the application for the spirits sampling endorsement;

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples may be altered with mixers, water, and/or ice. Beer and wine samples must be two ounces or less, up to a total of four ounces per person during any one visit to the premises;

(iv) The licensee must have food available for the sampling participants;

(v) Customers must remain in the service area while consuming samples;

(vi) All employees serving spirits, beer, or wine during sampling events must hold a class 12 server permit;

(vii) There must be at least two employees on duty when conducting sampling events;

(viii) Sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled sampling events to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included;

(e) The cost for a beer and wine sampling endorsement is two hundred dollars. There is no charge for a spirits sampling endorsement.

(7) A grocery store licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(8) A grocery store licensee may sell beer and wine over the internet. See WAC 314-03-020 regarding internet sales and delivery.

(9) A grocery store applicant or licensee may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(10) A grocery store licensee may apply for an endorsement to sell beer and cider growlers.

(a) Beer and cider must be sold in sanitary containers provided by the purchaser, licensee or the manufacturer and filled by the employee at the time of purchase.

(b) The taps must be located behind a counter where only employees have access or the taps must have locks preventing use unless unlocked and operated by an employee.

(c) Only employees of the licensee are permitted to operate the taps.

(d) All employees operating a tap must hold a class 12 alcohol server permit.

(e) The cost for the endorsement is one hundred twenty dollars.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-02-103 What is a wine retailer reseller endorsement? (1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license ((~~or~~)), the holder of a beer and/or wine specialty shop license, or the holder of a combination spirits, beer, and wine license to allow the sale of wine at retail to on-premises liquor licensees.

(2) For holders of a grocery store license: No single sale to an on-premises liquor licensee may exceed twenty-four liters.

(3) For holders of a beer and/or wine specialty shop license:

(a) No single sale may exceed twenty-four liters, unless the sale is made by a licensee that was formerly a state liquor store or contract liquor store.

(b) May sell a maximum of five thousand liters of wine per day for resale to retailers licensed to sell wine for consumption on the premises.

(4) A grocery store licensee or a beer and/or wine specialty shop licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(5) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee or a beer and/or wine specialty shop licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee or beer and/or wine specialty shop licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(6) The annual fee for the wine retailer reseller endorsement for a grocery store licensee is one hundred sixty-six dollars.

(7) The annual fee for the wine retailer reseller endorsement for a beer and/or wine specialty shop licensee is one hundred ten dollars.

(8) Sales made under the reseller endorsement are not classified as retail sales for taxation purposes.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 are hereby established as follows:

(1) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(1).

(2) The fee for a special permit as authorized by RCW 66.20.010(2) for purchase of five gallons or less is established as five dollars and for purchase of over five gallons is established as ten dollars.

(3) A fee for a banquet permit, as authorized by RCW 66.20.010(3), is established in WAC 314-18-040.

(4) The fee for a special business permit, as authorized by RCW 66.20.010(4), is established in WAC 314-38-010(2).

(5) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(5).

(6) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(6).

(7) A special permit as authorized by RCW 66.20.010(7) shall be issued without charge to those eligible entities.

(8) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(8).

(9) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(9).

(10) The fee of thirty dollars is established for a special permit as authorized by RCW 66.20.010(10).

(11) The fee of seventy-five dollars is established for a special permit as authorized by RCW 66.20.010(11).

(12) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(13).

(13) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(14).

(14) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(15).

(15) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(16).

(16) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(17).

NEW SECTION

WAC 314-38-110 Nonprofit wine auction permit. (1) A nonprofit auction permit is for a nonprofit organization to sell wine through a private auction not open to the public.

(2) The nonprofit organization must complete a nonprofit wine auction permit application and submit the application and fee to the WSLCB.

(a) The date and location of the auction must be specified on the application.

(b) The one-time event fee is twenty-five dollars multiplied by the number of wineries that are selling wine at the auction event.

(c) A list of event attendees must be submitted with the wine auction permit application.

(3) The holder of the permit may conduct wine tastings of the wine to be auctioned at the event.

(4) All wine sold by auction cannot be consumed during the event.

(5) Wine from multiple wineries may be sold at the auction. Each winery must be listed on the application.

(6) The permit must be posted in a conspicuous location at the premises for which the permit was issued during all times the permit is in use.

WSR 17-21-113
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed October 18, 2017, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-101.

Title of Rule and Other Identifying Information: WAC 314-12-146 Private label spirits.

Hearing Location(s): On November 29, 2017, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA.

Date of Intended Adoption: December 13, 2017.

Submit Written Comments to: Karen McCall, P.O. Box 43098, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by November 29, 2017.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1631, fax 360-664-9689, email rules@lcb.wa.gov, by November 29, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules are needed to clarify the requirements for private label spirits between a spirits manufacturer and a spirits retailer.

Reasons Supporting Proposal: Stakeholders requested the board develop rules for this activity.

Statutory Authority for Adoption: RCW 66.08.030.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs or reporting requirements to licensees.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. No costs or reporting requirements are required.

October 18, 2017
Jane Rushford
Chair

NEW SECTION

WAC 314-12-146 Private label spirits. Distillers, crafter distillers, spirit certificate of approval holders, and manufacturers of spirits may produce private label spirits for on-premises and off-premises spirits retailers under the following conditions:

(1) There may be no exclusivity between the producer and the retailer for the private label spirit product. The spirit product must be reasonably available to all spirits retailers licensed to sell spirits;

(2) A copy of the contract between the producer and the spirits retailer for all private label spirits products must be submitted to the board; and

(3) The distiller, craft distiller, spirit certificate of approval holder, or manufacturer of spirits must submit a TTB certificate of label approval for each private label produced to the board for review.

WSR 17-21-119**PROPOSED RULES****SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed October 18, 2017, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-161.

Title of Rule and Other Identifying Information: WAC 392-344-080 Construction documents—Bids and contract provisions.

Hearing Location(s): On November 21, 2017, at 10:00 a.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Wanamaker Meeting Room, Olympia, WA 98501.

Date of Intended Adoption: November 27, 2017.

Submit Written Comments to: Scott Black, OSPI, email schoolfacilitiesrules@k12.wa.us, fax 360-586-3946, by November 21, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by November 14, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 392-344-080 requires school districts to provide OSPI proof of insurance for school construction assistance program (SCAP)-funded school projects under construction. Currently, the rule requires school districts to demonstrate to OSPI that they carry commercial all risk property insurance as a condition to receiving SCAP funding. This proposed rule would require evidence of builder's risk insurance, which provides coverage while a school is under construction.

Reasons Supporting Proposal: The proposed rule would more accurately reflect the insurance coverage required by OSPI.

Statutory Authority for Adoption: RCW 28A.525.020.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6268; and Enforcement: Randy Newman, P.O. Box 47200, Olympia, WA 98504-7200, 360-725-6265.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

October 18, 2017

Chris P. S. Reykdal

Superintendent of

Public Instruction

AMENDATORY SECTION (Amending WSR 10-09-008, filed 4/8/10, effective 5/9/10)

WAC 392-344-080 Construction documents—Bids and contract provisions. The construction documents shall include the following bid and contract provisions:

(1) Separate or combined bids. The school district shall determine if the bids for general, mechanical, or electrical are to be separate or combined.

(2) Combination projects. For those projects which include a combination of both new construction and modernization, bid documents shall provide for separate and distinct bids for each and shall, when combined, be the low bid for the project.

(3) Ineligible items. Items ineligible for state funding assistance shall be bid separate or as an alternate.

(4) Bid law. All items included in the construction documents shall be bid in accordance with RCW 28A.335.190 and 43.19.1906.

(5) ~~((Commercial all risk property))~~ Builder's risk insurance. Provision for ~~((commercial all risk property))~~ builder's risk insurance is mandatory for all school facilities under construction. The insurance shall cover at a minimum the amount of the work in place and materials to be used in the project which is in place and on the site. A certificate of insurance shall be submitted to the superintendent of public instruction that insurance is provided for by the contractor or the school district. Only costs for builder's risk insurance provided for in the construction documents will be eligible for state funding assistance.

WSR 17-21-120
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 18, 2017, 11:20 a.m.]

October 18, 2017
Chris P. S. Reykdal
State Superintendent
of Public Instruction

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-11-040.

Title of Rule and Other Identifying Information: Citizen complaint procedures, chapter 392-168 WAC.

Hearing Location(s): On December 6, 2017, at 1:00 p.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Brouillet Room, Olympia, WA 98501.

Date of Intended Adoption: December 11, 2017.

Submit Written Comments to: Estela Garcia, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email estela.garcia@k12.wa.us, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by November 29, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update OSPI's complaint procedures for programs administered under the Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA) in 2016. These complaint procedures are outlined in chapter 392-168 WAC.

Reasons Supporting Proposal: ESSA's amendments to ESEA last year require OSPI to make several changes to chapter 392-168 WAC, which spells out the agency's process for investigating and resolving citizen complaints regarding federally funded programs under ESEA. Among other things, the changes would (1) update the terms and references in the current rule to align with ESEA as amended by ESSA, and (2) establish a new timeline for OSPI to investigate and resolve complaints regarding federally funded services provided to private school students (so-called equitable services).

Statutory Authority for Adoption: RCW 28A.300.070.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Gayle Pauley, OSPI, 360-725-6170.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-115 Applicability. This chapter shall apply to federal programs authorized under the Elementary and Secondary Education Act and administered by the superintendent of public instruction, including the following:

(1) Title I, Part A: Improving Basic Programs Operated by Local Educational Agencies;

(2) Title I, Part B(~~(, Subpart 1: Reading First)~~): State Assessment Grants;

(3) ~~((Title I, Part B, Subpart 3: William F. Goodling Even Start Family Literacy Program;~~

~~(4)))~~ Title I, Part C: Education of Migratory Children;

~~((5)))~~ (4) Title I, Part D: Prevention and Intervention Programs for Children and Youth Who Are Neglected, Delinquent, or At-Risk;

~~((6) Title I, Part F: Comprehensive School Reform;~~

~~(7)))~~ (5) Title II, Part A: ~~((Teacher and Principal Training and Recruiting Fund))~~ Supporting Effective Instruction;

~~((8) Title II, Part D: Enhancing Education Through Technology;~~

~~Title III—Language Instruction for Limited English Proficient and Immigrant Students~~

~~(9)))~~ (6) Title III, Part A: English Language Acquisition, Language Enhancement, and Academic Achievement Act;

~~((10) Title IV—21st Century Schools;~~

~~(11)))~~ (7) Title IV, Part A(~~(, Subpart 1: Safe and Drug Free Schools and Communities)~~): Student Support and Academic Enrichment Grants;

~~((12)))~~ (8) Title IV, Part B: 21st Century Community Learning Centers;

~~((Title V—Promoting Informed Parental Choice and Innovative Programs~~

~~(13)))~~ (9) Title IV, Part C: Expanding Opportunity Through Quality Charter Schools;

(10) Title V, Part A: ~~((Innovative Programs))~~ Funding Transferability for State and Local Education Agencies;

~~((Title VI—Flexibility and Accountability~~

~~(14) Title VI, Part A, Subpart 1: Improving Academic Achievement, Accountability, Grants for State Assessments and Enhanced Assessments;~~

~~(15)))~~ (11) Title ~~((VI))~~ V, Part B, Subpart 1: Small, Rural School Achievement Program;

~~((16)))~~ (12) Title ~~((VI))~~ V, Part B, Subpart 2: Rural and Low-Income Schools;

~~((17)))~~ (13) Title ~~((IX))~~ VIII—General Provisions(~~(;~~

~~(18) Title IX, Part E (Section 9532): Unsafe School Choice Option)).~~

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-132 Informing citizens about complaint procedures. The superintendent of public instruction shall inform parents and other interested individuals about

the citizen complaint procedures in this chapter. Specific actions to be taken by the superintendent of public instruction include:

(1) Disseminating copies of the state's procedures to parents, advocacy agencies, professional organizations, and other appropriate entities;

(2) Conducting ~~((insert))~~ training sessions on the complaint process ~~((through educational service districts; and~~

~~((3) Including information about the system in statewide conferences))~~ for local school districts, educational service districts, or other subgrantees, which may include webinars and screencasts.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-145 Procedure for filing a complaint.

The procedure for filing a complaint shall be as follows:

(1) A complaint alleging a violation by a local school district, an educational service district, or other subgrantee shall be filed directly with the superintendent of public instruction.

(2) The superintendent of public instruction, upon receipt of a signed, written complaint against a local school district or other public agency, an educational service district, or other subgrantee, shall refer the complaint to the educational entity for action pursuant to this chapter. A complaint against the state shall be investigated pursuant to WAC 392-168-180.

(3) Receipt of a complaint by the superintendent of public instruction activates a time limit not to exceed sixty calendar days, unless an extension of the time limit is approved by the superintendent of public instruction on the basis of exceptional circumstances with respect to a particular complaint.

(4) Receipt of complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall activate a time limit not to exceed forty-five calendar days.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-155 Investigation of and response to complaints against a school district or other public agency, educational service district, or other subgrantee.

Investigation of and response to a complaint shall be as follows:

(1) Upon receipt of a properly filed complaint, the superintendent of public instruction shall send a copy of the complaint to the educational entity, for investigation of the alleged violations.

(2) The educational entity shall investigate the complaint. The responsible official of the educational entity shall respond in writing to the superintendent of public instruction, and include documentation of the investigation, no later than twenty calendar days after the date of receipt by the entity of such complaint.

(3) The response to the superintendent of public instruction shall clearly state either:

(a) That the educational entity denies the allegations contained in the complaint and the basis for such denial; or

(b) Propose reasonable corrective action(s) deemed necessary to correct the violation.

(4) The superintendent of public instruction shall provide the complainant a copy of the entity's response to the complaint.

(5) The superintendent of public instruction will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the superintendent of public instruction, the superintendent of public instruction will make an independent determination as to whether the public agency is in violation of any federal program requirement as authorized under the Elementary and Secondary Education Act as amended by ~~((No Child Left Behind))~~ the Every Student Succeeds Act or this chapter.

(7) The superintendent of public instruction shall issue a written decision to the complainant and public agency that addresses each allegation in the complaint including findings of fact, conclusions, and the reasonable corrective measures deemed necessary to correct any violation. ~~((OSPI))~~ The superintendent may provide technical assistance activities or negotiations; and corrective measures necessary to resolve a complaint. All actions shall be instituted, as soon as possible but in no event later than thirty calendar days following the date of the decision, unless otherwise agreed to, or for good cause.

(8) The written decision by the superintendent of public instruction is the final decision in the matter. A complaint is considered resolved when the superintendent has issued a written decision and corrective measures, if warranted, have been completed.

(9) If compliance by a local district or other public agency, educational service district, or other subgrantee is not achieved pursuant to subsection (7) of this section, the superintendent of public instruction may initiate fund withholding, fund recovery, or any other sanction(s) deemed appropriate.

~~((10) For complaints arising under 20 U.S.C. § 7883 (participation by private school children), a complainant may appeal the superintendent's resolution to the Secretary of Education (U.S. Department of Education) within thirty days of receiving the written decision from the superintendent of public instruction.))~~

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-168-175 Complaints against the superintendent of public instruction—Designation of responsible employee(s).

(1) A complaint alleging a violation by the superintendent of public instruction shall be filed directly with the superintendent of public instruction in the form specified in WAC 392-168-140.

(2) The superintendent of public instruction shall designate at least one office of the agency to monitor and coordinate the agency's compliance with this chapter, which shall include ensuring that investigation of any complaint is conducted expeditiously and thoroughly. Complaints concerning

violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, shall be coordinated by the staff assigned to fulfill the duties of the ombudsman for equitable services as provided in 20 U.S.C. Secs. 6320 and 7881.

AMENDATORY SECTION (Amending WSR 05-19-033, filed 9/12/05, effective 10/13/05)

WAC 392-168-180 Complaints against the superintendent of public instruction—Investigation of and response to complaints. (1) The staff responsible for investigating the alleged violation shall commence investigation within ten days of receipt of the complaint by the superintendent of public instruction.

(2) Investigation by the superintendent of public instruction may include on-site investigations as appropriate.

(3) Upon completion of the investigation, investigating staff shall provide the superintendent of public instruction with a written report on the results of the investigation, no later than sixty calendar days after the receipt of such complaint. For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, investigating staff shall provide the written report to the superintendent no later than thirty-five calendar days after receipt of the complaint.

(4) The superintendent of public instruction shall respond in writing to the complainant as expeditiously as possible but in no event later than ten calendar days after the date of receipt of the written report described in subsection (3) of this section.

(5) The response shall clearly state either:

(a) That the complaint is without merit, the allegations are denied, and the basis for such denial; or

(b) The reasonable corrective measures deemed necessary to correct any violation: Provided, That any such corrective measures deemed necessary shall be instituted as expeditiously as possible but in no event later than thirty calendar days following the date of the response to the complainant.

AMENDATORY SECTION (Amending WSR 89-23-001, filed 11/2/89, effective 12/3/89)

WAC 392-168-190 Appeal to the secretary of education in complaints against the superintendent of public instruction. (1) In the event that a complainant remains aggrieved with the response of the superintendent of public instruction, the complainant may file an appeal directly with the secretary, department of education.

(2)(a) For complaints concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, the superintendent's response may be appealed to the secretary not later than thirty days after the superintendent responds to the complaint.

(b) If the superintendent fails to resolve a complaint concerning violations of 20 U.S.C. Sec. 7881, Participation by private school children and teachers, within the forty-five-day limit, the complainant may appeal directly to the secretary no later than thirty days after the expiration of the forty-five-day limit.

WSR 17-21-121
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed October 18, 2017, 11:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-163.

Title of Rule and Other Identifying Information: Highly capable (HiCap) program, chapter 392-170 WAC.

Hearing Location(s): On December 6, 2017, at 1:30 p.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Brouillet Conference Room, Olympia, WA 98501.

Date of Intended Adoption: December 11, 2017.

Submit Written Comments to: Estela Garcia, OSPI, HiCap, P.O. Box 47200, Olympia, WA 98504-7200, email estela.garcia@k12.wa.us, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by November 29, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these proposed rules is to align OSPI's rules for the HiCap program, chapter 392-170 WAC, with the new statutory requirement in EHB 2242 (2017) that school district practices for identifying the most HiCap students must prioritize equitable identification of low-income students.

Reasons Supporting Proposal: OSPI must amend chapter 392-170 WAC to ensure that the agency's rules for the HiCap program are not inconsistent with state statutory law.

Statutory Authority for Adoption: RCW 28A.185.050.

Statute Being Implemented: EHB 2242 (2017).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Gayle Pauley, OSPI, 360-725-6170.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

October 18, 2017
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-07-020, filed 3/12/13, effective 4/12/13)

WAC 392-170-030 Substance of annual school district plan. The school district's annual plan shall contain the following:

- (1) A report of the number of K-12 students who are highly capable that the district expects to serve by grade level;
- (2) A description of the district's plan to identify students; consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students;
- (3) A description of the highly capable program goals;
- (4) A description of the services the highly capable program will offer;
- (5) A description of the instructional program the highly capable program will provide;
- (6) A description of ongoing professional development for educators of students who are highly capable and general education staff;
- (7) A description of how the highly capable program will be evaluated that includes information on how the district's highly capable program goals and student achievement outcomes will be measured;
- (8) A fiscal report; and
- (9) Assurances signed by the school district's authorized representative that the district will comply with all applicable statutes and regulations.

AMENDATORY SECTION (Amending WSR 15-14-034, filed 6/23/15, effective 7/24/15)

WAC 392-170-045 Referral process for highly capable students. Each school district shall establish written procedures for the referral of students to participate in programs for highly capable students. Such procedures shall permit referrals based on data or evidence from teachers, other staff, parents, students, and members of the community.

A district's referral procedure for students who are highly capable may include screening procedures to eliminate students who, based on clear, current evidence, do not qualify for eligibility under WAC 392-170-055.

Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

AMENDATORY SECTION (Amending WSR 13-07-020, filed 3/12/13, effective 4/12/13)

WAC 392-170-055 Assessment process for selection as highly capable student. (1) Students nominated for selection as a highly capable student, unless eliminated through screening as provided in WAC 392-170-045, shall be assessed by qualified district personnel;

(2) Districts shall use multiple objective criteria for identification of students who are among the most highly capable. There is no single prescribed method for identification of students among the most highly capable; ~~((and))~~

(3) Districts shall have a clearly defined and written assessment process; and

(4) Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

AMENDATORY SECTION (Amending WSR 15-14-034, filed 6/23/15, effective 7/24/15)

WAC 392-170-075 Selection of most highly capable. Each school district's board of directors shall adopt a selection policy and school district shall establish written procedures for the selection of the most highly capable students by the multidisciplinary selection committee. Such policy and selection procedures:

- (1) Shall not violate federal and state civil rights laws including, without limitation, chapters 28A.640 and 28A.642 RCW;
- (2) Shall be based on professional judgment as to which students will benefit the most from inclusion in the district's program; ~~((and))~~
- (3) Shall be based on a selection system that determines which students are the most highly capable as defined under WAC 392-170-055, and other data collected in the assessment process; and
- (4) Consistent with RCW 28A.185.020, district practices for identifying the most highly capable students must prioritize equitable identification of low-income students.

WSR 17-21-122

PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 18, 2017, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-164.

Title of Rule and Other Identifying Information: Learning assistance program (LAP), chapter 392-162 WAC; and apportionment of state moneys for the state learning assistance program, WAC 392-122-505.

Hearing Location(s): On December 6, 2017, at 1:00 p.m., at the Office of Superintendent of Public Instruction (OSPI), 600 South Washington Street, Brouillet Conference Room, Olympia, WA 98501.

Date of Intended Adoption: December 11, 2017.

Submit Written Comments to: Estela Garcia, OSPI, LAP, P.O. Box 47200, Olympia, WA 98504-7200, email estela.garcia@k12.wa.us, by December 6, 2017.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email Kristin.murphy@k12.wa.us, by November 29, 2017.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is [to] align the rules for LAP, chapter 392-162 WAC and WAC 392-122-505, with recent statutory changes made in EHB 2242 (2017). The proposed changes would implement the new high poverty based school allocation and language changes made in the statute.

Reasons Supporting Proposal: EHB 2242 amended the LAP statute (chapter 28A.165 RCW) and the prototypical funding formula statute (RCW 28A.150.260). OSPI's LAP rules need to be amended to align with the statute.

Statutory Authority for Adoption: RCW 28A.165.075, 28A.150.290.

Statute Being Implemented: EHB 2242 (2017).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Gayle Pauley, OSPI, 360-725-6170.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

October 18, 2017
Chris P. S. Reykdal
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due. The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or school operated pursuant to a state-tribe education compact if the school district, charter school, or compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include two allocations: A district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior

school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system.

(b)(i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least fifty percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October headcount enrollment in grades K-12 for free and reduced-price lunch. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 for the prior year.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of ~~((a)) the learning assistance program ((designed to provide learning assistance to public school students enrolled in grades kindergarten through twelve who score below standard in English language arts or mathematics for his or her grade level)).~~

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-010 Purpose. ~~((The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to assist underachieving students enrolled in grades kindergarten through twelve who score below standard in English language arts and mathematics for his or her grade level.))~~ The learning assistance program requirements in this chapter are designed to:

(1) Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;

(2) Promote the use of data when developing programs to assist ~~((underachieving))~~ students who are not meeting academic standards and reduce disruptive behaviors in the classroom;

(3) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist ~~((underachieving))~~ students who are not meeting academic standards and reduce disruptive behaviors in the classroom; and

(4) Guide school districts in providing extended learning opportunities to assist ~~((underachieving))~~ K-12 students who are not meeting academic standards in English language arts or mathematics, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades eleven

and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-020 Definition—Learning assistance program (LAP). (1) As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students enrolled in grades kindergarten through twelve who do not meet state English language arts or mathematics standards by providing supplemental instruction and services to those students.

(2) School districts implementing a learning assistance program must first focus on addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills.

(a) A district may meet this requirement during the regular school year by ensuring that of the total number of students in grades kindergarten through four served by the learning assistance program, approximately fifty percent are students ~~((enrolled in grades kindergarten through four))~~ receiving English language arts services. Students served under readiness to learn programs provided under WAC 392-162-041 (1)(g) are excluded from this calculation.

(b) A district may serve a threshold lower than fifty percent if it demonstrates a lesser need through one of the following data sources:

(i) The district's prior year statewide assessment scores for third and fourth grade reading;

(ii) The district's prior year's reported number of kindergarten through grade four students reading on grade level under RCW 28A.320.203;

(iii) Districts serving a lower threshold under (b)(i) or (ii) of this subsection must be approved to do so at the start of the school year by the office of the superintendent of public instruction.

The learning assistance program may then be used to support ~~((underachieving))~~ students who are not meeting academic standards in grades kindergarten through twelve by providing supplemental English language arts or mathematics instruction, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, by addressing the needs of eleventh and twelfth grade students to assist them in meeting state and district graduation requirements, and to reduce disruptive behaviors in the classroom.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

WAC 392-162-033 Definition—~~((Underachieving))~~ Students who are not meeting academic standards. As used in this chapter, the term "~~((underachieving))~~ students who are not meeting academic standards" means students with the greatest academic ~~((deficits))~~ needs in basic skills as identified by statewide, school, or district assessments or other performance tools.

AMENDATORY SECTION (Amending WSR 09-24-075, filed 11/30/09, effective 12/31/09)

WAC 392-162-036 Definition—Extended learning opportunities. As used in this chapter the term "extended learning opportunities" means a program of learning assistance in addition to the required basic education instruction designed to improve the educational performance of ~~((underachieving))~~ students who are not meeting academic standards selected under WAC 392-162-080. The minimum allocation for the learning assistance program shall provide an extended school day and extended school year for each level of school and a per student allocation for maintenance, supplies, and operating costs.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-041 Best practices. (1) Best practices are to be used to provide learning assistance program services to identified learning assistance students. The district must select and implement the best practices that are designed to increase student achievement and are aligned with research. To the extent they are included as a best practice or strategy in one of the state menus on or an alternative allowed under subsection (2)(b) of this section, the following are services and activities that may be supported by the learning assistance program:

(a) Extended learning opportunities occurring:

(i) Before or after the regular school day;

(ii) On Saturday; and

(iii) Beyond the regular school year.

(b) Extended learning opportunities provided under RCW 28A.320.190. Eligibility is for:

(i) Eleventh and twelfth grade students not on track to meet local or state graduation requirements; and

(ii) Students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade.

(c) Professional development for certificated and classified staff that focuses on:

(i) The needs of a diverse student population;

(ii) Specific literacy and mathematics content and instructional strategies; and

(iii) The use of student work to guide effective instruction and appropriate assistance.

(d) Consultant teachers to assist in implementing effective instructional practices by teachers serving participating students.

(e) Tutoring support for participating students.

(f) Outreach activities and support for parents of participating students, including employing parent and family engagement coordinators.

(g) Up to five percent of district's learning assistance program base allocation may be used to deliver a readiness to learn program. Students served are to be significantly at-risk of not being successful in school and services must be focused on reducing barriers to learning, increasing student engagement, and enhancing students' readiness to learn. The program may include academic or nonacademic supports offered by the district or through development of partnerships

with community-based organizations, educational service districts, and other local agencies. The school board must approve in an open meeting any community-based organization or local agency before learning assistance program funds may be expended.

(2) Beginning in the 2016-17 school year districts must either:

(a) Select a practice or strategy that is on one of the state-approved menus for the learning assistance program; or

(b) Use a practice or strategy that is not on the state menus for up to two years. Districts must annually notify the office of the superintendent of public instruction if selecting an alternative practice or strategy. At the end of the two years, the district must be able to demonstrate improved outcomes for participating learning assistance program students. If the district is able to demonstrate improved outcomes commensurate with the state approved menu for such students, the office of the superintendent of public instruction will approve the use of the alternative practice for one additional year. For each subsequent year, the district must provide data that demonstrates that participating students are meeting or exceeding academic achievement compared to those students who are being served by a state approved best practices and strategy.

(3) School districts may enter into cooperative agreements with state agencies, local governments, or school districts for administrative or operational costs needed to provide services in accordance with the state menus developed beginning in 2016-17.

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

WAC 392-162-054 (~~Definition—District eligibility and distribution~~) Allocation, supplement not supplant, and use of funds. (1) The funds for the learning assistance program shall be ~~((appropriated in accordance with the Omnibus Appropriations Act and RCW 28A.150.260. The distribution formula is for school district allocation purposes only, but funds appropriated for the))~~ allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be distributed to the school building that generated the funding and may not supplant the learning assistance program base allocation.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through 28A.165.065. ((A school district's funded students for the learning assistance program shall be the sum of the district's full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced price lunch in the prior school year.))

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-112 Carry over of funds. (1) Districts may carry over from one year to the next up to ten percent of

the ~~((LAP funds—state or education legacy trust funds)) learning assistance program base allocation provided allocated under ((this program)) WAC 392-122-605; however, carry-over funds shall be expended for the learning assistance program.~~

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carryover must be expended for the learning assistance program and for the specific school generating the allocation.